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NO. 3098

**United States**  
**Circuit Court of Appeals**  
**For the Ninth Circuit** 1139

R. R. SIDEBOTHAM and J. G. G. WILMOT,  
*Plaintiffs in Error,*  
vs.  
THE UNITED STATES OF AMERICA,  
*Defendant in Error.*

**Transcript of Record**

UPON WRIT OF ERROR TO THE UNITED  
STATES DISTRICT COURT OF THE DIS-  
TRICT OF MONTANA.

FILED  
DEC 24 1917  
F. D. MONCKTON,  
CLERK.







NO.....

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**United States**  
**Circuit Court of Appeals**  
**For the Ninth Circuit**

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R. R. SIDEBOTHAM and J. G. G. WILMOT,  
*Plaintiffs in Error,*  
vs.  
THE UNITED STATES OF AMERICA,  
*Defendant in Error.*

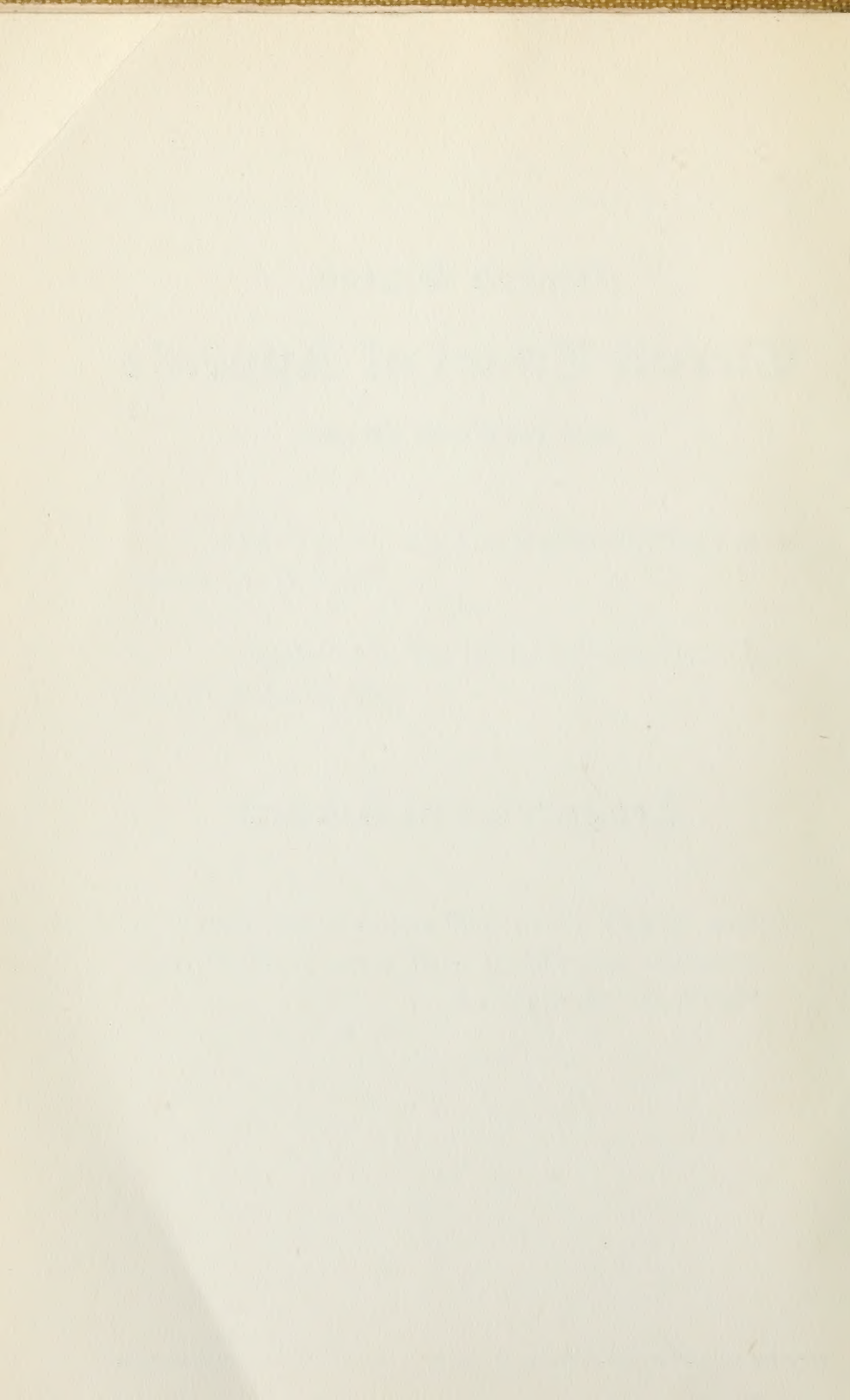
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**Transcript of Record**

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UPON WRIT OF ERROR TO THE UNITED  
STATES DISTRICT COURT OF THE DIS-  
TRICT OF MONTANA.

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*Names and Addresses of Attorneys of Record*

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Attorney for Plaintiffs in Error.  
B. K. Wheeler, Butte, Montana,  
Attorney for Defendant in Error.

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IN THE DISTRICT COURT OF THE UNITED  
STATES, IN AND FOR THE DISTRICT  
OF MONTANA.

---

THE UNITED STATES OF AMERICA,  
*Plaintiff,*

vs.

A. M. ALDERSON, W. C. RAE, R. R. SID-  
BOTHAM, J. G. G. WILMOT, J. W. SPEER,  
D. G. BERTOGLIO, H. A. MEYER, J. A.  
SAMPSON, M. A. CORT, C. A. RAINWATER,  
C. W. TOBIN, W. W. WHITE, E. C. WILLS,  
J. J. IVES and L. D. CLAUSEN,  
*Defendants.*

---

BE IT REMEMBERED, that on the 30th of  
June, 1916, the Grand Jury of said court presented  
an indictment against the defendants herein, in the  
words and figures following, to-wit:



UNITED STATES OF AMERICA } ss.  
 District of Montana

In the District Court of the United States, within and for the district of Montana, of the April term of said district court held at Helena, Lewis and Clark county, in said district of Montana, in the year of our Lord one thousand nine hundred and sixteen.

The grand jurors of the United States of America, duly impaneled, sworn and charged to inquire within and for the district of Montana, and true presentment make of all crimes and misdemeanors committed against the laws of the United States, within the state and district of Montana, upon their oaths and affirmations do find, charge and present:

That at all times from the twenty-sixth day of December, 1912, to the date of the filing of this indictment, the Northwestern Trustee Company was a corporation organized and existing under and pursuant to the laws of the state of Montana, having an authorized capital stock of the par value of five hundred thousand dollars, divided into fifty thousand shares, each of the value of ten dollars.

That on the 31st day of July, 1913, in the district of Montana, and within the jurisdiction of this court, A. M. Alderson, W. C. Rae, R. R. Sidebotham, J. G. G. Wilmot, J. W. Speer, D. G. Bertogolio, H. A. Meyers, J. A. Sampson, M. A. Cort, C. A. Rainwater, C. W. Tobin, W. W. White, E. C. Wills, J. J. Ives and L. D. Clausen, named as de-

fendants herein, knowingly, unlawfully and feloniously had theretofore devised and intended to devise a scheme and artifice to defraud divers persons whose names are to the grand jurors unknown, of their money and property in and by inducing, by false and fraudulent representations and pretenses, and by fraudulent artifices and devices, said persons so intended to be defrauded to part with such money and property in the purchase of shares of the stock of said Northwestern Trustee Company, with the intent, on the part of the defendants, to secure for themselves, and to convert to their own use, a large part of such money and property, the exact amount of said money and property so intended to be secured and converted being to the grand jurors unknown; said scheme and artifice being fully and particularly set forth as follows, to-wit:

Said defendants intended as part of said scheme and artifice to sell, and to cause said Northwestern Trustee Company, to sell, to said persons so intended to be defrauded, shares of stock of said Northwestern Trustee Company, and to secure for themselves, and to convert to their own use, a large part of the money and property paid in the purchase of said stock by said persons so intended to be defrauded, the exact amount of said part being to the grand jurors unknown; and said defendants, for the purpose of inducing said persons so intended to be defrauded to purchase said stock so intended to be sold to them, intended falsely and fraudulently to represent to said persons, and to each of them, and

to induce them to believe, that said stock to be sold as aforesaid, and all of it, was treasury stock of said company; that the money and property paid by said persons, so intended to be defrauded, in the purchase of said stock, would go into the treasury of said company and would be used to carry on, extend and expand the business of said company; that only treasury stock of said company was on the market, thereby enabling said company to sell said stock and secure from such sales sufficient funds with which to carry on, extend and expand its business to the benefit of the stockholders; that said company was engaged in carrying on a banking business in connection with its other business and was on a dividend paying basis and that said company would declare and pay a dividend of not less than eight per cent. on its capital stock and surplus within one year after the purchase of said stock by said persons so intended to be defrauded; and that said company would declare and pay a dividend of not less than eight per cent. on its capital stock and surplus each year thereafter; and that said stock would rapidly increase in value; and that an investment in the stock of said Northwestern Trustee Company would be a safe, sound and secure investment and that it would be the safest investment in the world; and that there was no chance for the purchasers of said stock to lose; and that said company was in a flourishing condition;

And each and all of the aforesaid representations, as the defendants well knew, would be false and

fraudulent, and the said defendants intended thereby to deceive said persons so intended to be defrauded, and to induce said persons to part with their money and property in the purchase of said stock as aforesaid; and in deed and in truth, it was part of said scheme and artifice of said defendants that a large part of said stock intended to be sold as aforesaid, would be their own personal holdings in said company; and it was part of said scheme and artifice of said defendants to effect the sale of said personal stock by representing that the same was treasury stock, whereas, in truth and in fact, said defendants intended to convert the proceeds of said sales to their own use; and it was part of said scheme and artifice of said defendants that the remaining part of said stock which said defendants intended to sell, and cause to be sold as aforesaid, should be treasury stock of said company, and it was part of said scheme and artifice of said defendants that less than seventy per cent. of the moneys and property paid for said treasury stock of said company, by said persons so intended to be defrauded, should be paid into the treasury of said company, and that the balance should be received and retained by said defendants to cover expenses of said sales and as profits and commissions for themselves thereon, but the exact amount of personal stock, the exact amount of treasury stock and the relative proportions of personal stock and treasury stock which said defendants so intended to sell and cause to be sold, is to the grand jurors unknown; and whereas,



in truth and in fact, as the said defendants well knew, the said Northwestern Trustee Company was not engaged in the banking business, and the said company was not on a business paying basis and would not and could not declare a dividend of any amount whatever on either its capital stock, or on its capital stock and surplus, within one year from the date of the purchase of said stock by said persons so intended to be defrauded, and would not and could not declare a dividend of eight per cent., or any other amount, on its capital stock and surplus each year thereafter; and whereas, in truth and in fact, as said defendants well knew, an investment in the stock of said company was not and would not be a safe, sound and secure investment, and that said company was not in a flourishing condition;

And it was further a part of said scheme and artifice of said defendants to make, and to cause the officers, directors and stockholders of said Northwestern Trustee Company, to make advances, from time to time, in the price at which said stock was to be so sold as aforesaid, and to falsely and fraudulently represent to said persons, so intended to be defrauded, and to induce them to believe that said advances in the selling price of said stock were based upon and represented a corresponding increase in the real intrinsic value of said stock and in the assets and profits of said company, and that said advances in the selling price of said stock, over and above the par value of ten dollars per share, would create a large surplus fund for said Northwestern

Trustee Company so as to enable said company to carry on and rapidly extend and expand its businesss, and that all amounts paid for said stock, over and above the par value thereof, would be paid into the treasury of said company and would constitute such surplus fund of said company, and thereby induce said persons, so intended to be defrauded, to part with their money and property in the purchase of said stock as aforesaid, whereas, in truth and in fact, as said defendants well knew, said advances in said selling price would be made by them, and by the officers, directors and stockholders of said company, arbitrarily, and without any regard to any corresponding increase in the real intrinsic value of said stock, and without any regard to any corresponding increase in the assets and profits of said company, and in truth and in fact, as said defendants well knew, said advances would not represent and could not be based upon or justified by any corresponding increase in the assets and profits of said company, but would be determined solely by the estimate of said defendants as to how far it would be practicable by means of such advances to gull said persons so intended to be defrauded; and whereas, in truth and in fact, as said defendants well knew, said advances in the selling price of said stock would not create a large surplus fund for said company and all amounts paid for said stock, over and above the par value of ten dollars per share, would not be paid into the treasury of said company, and would not constitute a surplus fund of said company; and it

was a part of said scheme and artifice of said defendants that said advances in the selling price of said stock should be made for the purpose of enabling the said defendants to sell and dispose of their own personal holdings of said stock, and stock of said company under their control, at such advanced prices, and that all money and property received from the sales of such stock, so owned by said defendants or under their control, should be received and retained by said defendants for their own use without any benefit whatever to said company or the stockholders; and for the purpose of enabling said defendants to receive large and additional commissions on all sales of treasury stock which should be made at such advanced prices;

And it was further a part of said scheme and artifice of said defendants to defraud said persons in and by the sale of said stock aforesaid, falsely and fraudulently to represent to said persons, that each and all of the officers and directors of said Northwestern Trustee Company had invested large sums of their own money in said company, and where, each and all, the owners and holders of large amounts of the stock of said company, and that a large number of well known and prominent financial, business and professional men, residing in the state of Montana, had invested large sums of their own money in said company and were the owners and holders of large amounts of the stock of said company, and that each of the directors of said company, and all of them, had no interest in the method

of operation of said company except in securing dividends as holders of its stock; whereas, in truth and in fact, as said defendants well knew, none of the officers or directors of said company had invested large amounts of their own money in the stock of said company, but, on the contrary, that large amounts of said stock had been issued by said company to said officers and directors without said officers and directors having paid any money or other valuable consideration whatever therefor; and whereas, in truth and in fact, as said defendants well knew, neither large number of well known or prominent financial, business or professional men residing in the state of Montana, had invested large sums of their own money in said stock, nor were they the owners and holders of large amounts of the stock of said company, but, on the contrary, as said defendants well knew, a large number of the shares of stock of said company owned and held by prominent and well known financial, business and professional men residing in the state of Montana, had been given to said well known and prominent financial, business and professional men by the officers, directors and promoters of said Northwestern Trustee Company, without any consideration whatever being paid for the same, for the sole purpose of enabling the officers, directors, promoters and sales agents of said company to falsely and fraudulently represent and pretend to said persons so intended to be defrauded as aforesaid, that said well known and prominent financial, business and professional



men were financially interested in said company and the holders and owners of the stock thereof; and whereas, in truth and in fact, as said defendants well knew, the only interest a large number of the directors of said company had in the operation of said company was in the amount of profits and commissions such directors could receive from the sales of the stock of said company.

And it was further a part of said scheme and artifice of said defendants to induce said persons, so intended to be defrauded, to purchase said stock as aforesaid, to falsely and fraudulently represent to said persons, that each year the said company had been in business it had earned a profit; that said company was making money; that it was earning a substantial net profit from its business operations and was firmly established on a profit earning basis; whereas, in truth and in fact, as said defendants well knew, each and all of said representations would be false and fraudulent, and whereas, in truth and in fact, as said defendants well knew, the said company had never at any time, while the said company had been in business, earned a profit, and had never at any time made any money, and was not then earning a profit from its business operations, and was not established on a profit earning basis.

And it was further a part of said scheme and artifice of said defendants to cause said Northwestern Trustee Company to issue, from time to time, what would purport to be statements of its financial con-

dition, and said defendants intended to communicate said statements, which they should so cause to be issued, to said persons so intended to be defrauded, for the purpose of inducing said persons so intended to be defrauded to purchase said stock as aforesaid; and said defendants, as part of said scheme and artifice, intended by means of such statements, falsely and fraudulently to represent to, and to induce said persons so intended to be defrauded, to believe that said statements fully and fairly represented the financial condition of said company, and that said company had on hand, at the time of the issuance of such statements, actual assets exceeding in value the par value of all capital stock of said company issued or subscribed for at the time of the issuance of such statements, and that there was a surplus in the treasury of said company available for dividends; whereas, in truth and in fact, said defendants well knew that at the time said defendants intended said statements would be issued as aforesaid, the actual value of the assets of said company would not then and there exceed or be equal in value to the par value of all the capital stock issued or subscribed for at the time of the issuance of such statements, and in truth and in fact, the said defendants well knew that a large amount of the assets of said company, as shown in such statements, would then and there be of little or no value, and that the value of said assets as shown in such statements would be arbitrarily fixed and determined by the officers and directors of said company without re-

gard to the true value thereof, and that there would be no surplus in the treasury of said company available for dividends; and whereas, in truth and in fact, as said defendants well knew, such statement would not then and there fully and fairly state and show the actual financial condition of said company, but would then and there be calculated to conceal from said persons, so intended to be defrauded, the true financial condition of said company, and in particular the fact that said company was carrying on and conducting its business at a loss.

And it was further a part of said scheme and artifice of said defendants to defraud said persons in and by the sale of said stock, as aforesaid, falsely and fraudulently to represent to said persons, so intended to be defrauded, that the capital stock and surplus of said Northwestern Trustee Company exceeded the sum of five hundred thousand dollars, intending by means of such representations to falsely and fraudulently represent to and induce said persons intended to be defrauded to believe that, at the time of the making of said false and fraudulent representations, the par value of the capital stock of said stock company then subscribed for, together with the surplus fund of said company, exceeded the sum of five hundred thousand dollars; whereas, in truth and in fact, as said defendants well knew, the par value of the capital stock of said company then subscribed for did not exceed the sum of one hundred and fifty thousand dollars, and that there was no surplus whatever in the treasury of

said company.

And it was further a part of said scheme and artifice of said defendants to defraud said persons in and by the sale of said stock as aforesaid, to induce said persons so intended to be defrauded, to purchase said stock as aforesaid, by falsely and fraudulently representing to said persons, so intended to be defrauded, that said company would make loans to the persons purchasing said stock on their property, both real and personal; that said company intended to and would appoint loan boards, consisting of stockholders of said company, in each community in the state of Montana, to pass on all applications for loans made to said company; and had then appointed such loan boards in a large number of communities, in the state of Montana, to wit, more than one hundred such communities; and that if such persons would purchase said stock such purchasers would be appointed members of such loan boards in the communities in which said purchasers respectively resided; whereas, in truth and in fact, as said defendants well knew, said company would not make loans to the persons purchasing said stock on their real and personal property; and said company would not appoint loan boards, consisting of stockholders of said company, in each community in the state of Montana; and said company had not appointed such loan boards in more than ten communities of the state of Montana; and that said company would not appoint persons purchasing said stock as members of said loan boards in the communities in



which said purchasers resided.

And the grand jurors aforesaid, on their oaths aforesaid, do further find, charge and present that the said defendants, so having devised and intending to devise the aforesaid scheme and artifice to defraud, in and for executing said scheme and artifice, and attempting so to do, did, on the 1st day of August, 1913, at Great Falls, in the state and district of Montana, willfully, unlawfully, knowingly, fraudulently and feloniously place and deposit, and cause to be placed and deposited, in a certain post office of the United States, to wit, the post office at Great Falls, Montana, to be sent and delivered by the post office establishment of the United States, a certain envelope, upon which said envelope the postage was fully prepaid, which said envelope was addressed to

Mrs. Alice M. Descelles,

Havre, Montana,

and which said envelope, so addressed, stamped and deposited as aforesaid, contained a certain writing in the words and figures as follows, to-wit:

“Properties handled on the Unit System of Ownership.

“Bond, Mortgage and Trust Departments

“Central Business Property Commercialized

“Branch Offices: Butte, Mont., 706-7-9 State Savings Bank Bld. St. Louis 5971 Easton Ave. Boise, Idaho, Wm. Krull, Rep. McCarty Building.

“NORTHERN TRUSTEE COMPANY

Incorporated

Authorized Capital Stock

\$500,000.00

SIDEBOTHAM & WILMOT

Fiscal Agents

General Offices: Lower Floor, Tod Bldg

Great Falls, Montana

“July 31, 1913.

“Mrs. Alice M. Descelles,

“Havre, Montana.

“Dear Sir:

“The opportunity to buy stock in the Northwestern Trustee Company is a rare one. If you will review back the organization of trust companies and mortgage bond companies in this and other states, you will find that there is only one time when it is possible for you to buy stock in such institutions and that is at the beginning.

“In options, subscriptions, notes receivable and cash this company now has more than \$350,000.00 in business upon its books, which is a record that has been gained by no other corporation in so short a time to our knowledge.

“We thought in all fairness that we should write you and inform you of these conditions. On the 13th day of August the paidup stockholders of this company will assemble at the company’s office at Great Falls, Montana, for the purpose of increasing the Board of Directors to thirteen and effecting a permanent organization. Thirteen of the best men

that can be chosen from our many stockholders will be selected.

“Another important issue before this meeting will be the question of whether or not the stock shall advance from \$15.00 to \$20.00 per share. A number of the Board of Directors have felt that the stock should advance to \$20.00 per share on account of the progress made and the strong personnel built up by this company. However, they thought this was a very important move and they decided to have the stockholders vote upon this issue as it is the intention of the people most interested in this company at this time that all important points pertaining to the company’s policies and future business shall be voted upon directly by the stockholders.

“We feel satisfied if you will give this company the attention it deserves that you will become a stockholder, and if you are already a stockholder you will increase your subscription as there is but little question but that the stock will advance \$5.00 per share shortly. The books of the company are open for your inspection at the company’s office, lower floor of the Tod Building, corner Central Avenue and Second Street.

“Thanking you for due consideration, we are,

“Yours very truly,

“NORTHWESTERN TRUSTEE COMPANY

“Robert R. Sidebotham,

“President.”

contrary to the form of the statute in such case made and provided, and against the peace and dig-

nity of the United States of America.

*SECOND COUNT.*

And the grand jurors aforesaid, on their oaths, aforesaid, do further find, charge and present:

That at all times from the twenty-sixth day of December, 1912, to the date of the filing of this indictment, the Northwestern Trustee Company was a corporation organized and existing under and pursuant to the laws of the State of Montana, having an authorized capital stock of the par value of five hundred thousand dollars, divided into fifty thousand shares, each of the value of ten dollars;

That on the 29th day of September, 1913, in the state and district of Montana, and within the jurisdiction of this court, A. M. Alderson, W. C. Rae, R. R. Sidebotham, J. G. G. Wilmot, J. W. Speer, D. G. Bertoglio, H. A. Meyer, J. A. Sampson, M. A. Cort, C. A. Rainwater, C. W. Tobin, W. W. White, E. C. Wills, J. J. Ives and L. D. Clausen, named as defendants herein, knowingly, unlawfully, and feloniously had theretofore devised and intended to devise a scheme and artifice to defraud, that is to say the same scheme and artifice set forth and described in the first count of this indictment, to which said first count for said description reference is hereby made the same as if herein fully set forth.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, charge and present, that the said defendants, A. M. Alderson, W. C. Rae, R. R. Sidebotham, J. G. G. Wilmot, J. W. Speer, D. G. Bertoglio, H. A. Meyer, J. A. Sampson, M. A.

Cort, C. A. Rainwater, C. W. Tobin, W. W. White, E. C. Wills, J. J. Ives and L. D. Clausen, so having, as aforesaid, as set forth and described in the first count of this indictment, unlawfully, knowingly and feloniously devised and intendeing to devise the said scheme and artifice to defraud, in and for executing said scheme and artifice to defraud, and attempting so to do, did on the 29th day of September, 1913, at Great Falls, in the state and district of Montana, wilfully, unlawfully, knowingly, fraudulently and feloniously, place and deposit, and cause to be placed and deposited, in a certain post office of the United States, to wit, the post office at Great Falls, Montana, to be sent and delivered by the post office establishment of the United States, a certain envelope upon which said envelope the postage was fully prepaid, which envelope was addressed to

Mrs. Alice M. Descelles,  
Havre, Montana.

and which said envelope, so addressed, stamped and deposited, as aforesaid, contained a certain letter and writing in the words and figures as follows, to-wit:

“Properties handled on the Unit System of Ownership

“Bond, Mortgage and Trust Departments

“Central Business Property Commercialized

“Branch Offices: Butte, Mont., 706-7-9 State Savings Bank Bld., St. Louis, 5971 Easton Ave. Boise, Idaho, Wm. Krull, Rep. McCarty Building.



“NORTHWESTERN TRUSTEE COMPANY

Incorporated

Authorized Capital Stock

\$500,000.00

SIDEBOTHAM & WILMOT

Fiscal Agents

General Offices, Lower Floor, Tod Bldg

Great Falls, Montana.

“Sep. 29 1913

“Dear Sir:

“We beg leave to call your attention to the fact that the Home Building Department of the Northwestern Trustee Company is now ready for operation. Enclosed you will find a circular on the certified Guaranteed Notes.

“The Company, in this plan, will pay you 6% on your savings, 4% 90 days, 5% 6 months to one year. The Certified Guaranteed Notes are as safe as the savings bank and behind each note issued is deposited first mortgages upon real estate of twice the valuation of the Certified Guaranteed Notes.

“You will probably be interested to know that the Company has purchased a tract of ground at the southeast corner of Second Avenue and Eighth Street North. The size of the plat of ground is 75x150 feet. The Company proposes to improve this property in the near future with an up-to-date, modern appartments house.

“The Company’s stock is selling rapidly at \$20.00 per share, and we will appreciate your sending in the names of three friends who might be interested

in either the Certified Guaranteed Notes or stock of this Company.

“Co-operation is the explanation of efficiency with the Northwestern Trustee Company, and your co-operation with us will assist materially in making a greater success of what is to be the strongest concern of its kind in the entire northwest. In options, contracts, notes receivable, cash and real estate, this Company now has over \$585,000.00. We are also in position to make farm loans on farm property.

“Thanking you for your co-operation, we are,

“Very truly yours,

“NORTHWESTERN TRUSTEE COMPANY

“Robert R. Sidebotham,

President”;

And in which said envelope was also then and there enclosed a certain circular or pamphlet of the following tenor:

CERTIFIED  
GUARANTEED  
NOTES  
Issued By  
NORTHWESTERN  
TRUSTEE  
COMPANY

— —  
Capital Stock and Surplus  
over  
\$500,000.00

Builders of Montana

---

BUSINESS BUILDINGS,  
HOMES, RANCH &  
FARM LOANS

---

FARM LOANS IN MONTANA

---

Commissioner Kennedy Thinks Something Should  
Be Done to Lower Rates.

---

Special to The Daily Tribune.

Helena, Sept. 6.—J. M. Kennedy, commissioner of agriculture and publicity, has been compiling information in his office concerning interest rates on farm loans in the northwest, and the figures show some very interesting facts. For instance—it is shown that the interest rate on secured farm loans in Iowa is  $5\frac{1}{2}$  per cent; Minnesota, South Dakota and Nebraska about 5.7 per cent and Wisconsin 5 1-9 per cent. Montana pays the highest of all, 9.3 per cent. This is on first mortgage loans. The interest rate on farmers' notes unsecured other than by the credit of the giver is higher, of course, in all centers, but Montana again pays much the highest rate. The range is from 5.8 per cent in Wisconsin to 11.4 per cent in Montana, the lowest rate being in Iowa and Wisconsin, and the highest in Montana. It is a singular fact that while the government reports and statistics, the authenticity of which cannot be disputed, show that Montana farm lands produce

per acre more profit to the farmer than the farm lands of any other state or territory in the American union, the farmer is taxed for his loans in Montana more than in any other section of the northwest.

Speaking on this question yesterday Mr. Kennedy said: "It has been the pleasant policy of the bankers outside of Montana who have been releasing money to Montana patrons for farm loans, to insist that farming is more precarious in Montana than elsewhere; that the state is new and undeveloped, and that farming is largely an experiment here; that the loan risk is greater in Montana than anywhere else west of the Mississippi river. This is grossly unfair to the state. It hampers the agricultural development of Montana. It places an unjust burden upon the husbandmen of this commonwealth of many hundreds of thousands of dollars annually. I personally know of one county in Montana where only one bank is located in one of the most prosperous sections of the state. The little town where the bank is situated is surrounded by one of the most magnificent farming and fruit raising districts in all this northwest country. Most of the farmers in the vicinity of that town are prosperous; in fact all of them are who have been there any length of time but there is a lot of undeveloped and uncultivated land in the neighborhood. If a new comer goes in there and purchases a piece of that unbroken land and seeks a loan at the local bank for the purpose of making some needed improvements, no matter what the security he has to offer, he has to pay 12

per cent. I was told by the cashier of that bank not long since that the bank was not carrying half a dozen loans that were not drawing 12 per cent. Recently I spoke to some agents of loan companies representing eastern money in this state, and asked them why it was that cheaper money could not be obtained by the farmers in the country of which I am speaking. The answer was there had not been much development there yet and the agents of the loan companies had never been in that section and did not know much about it.

“One of the big insurance companies recently made a point in its report to its stockholders to call attention to the fact that none of the company’s funds were invested in the state of Montana. The officers of the company seemed to think this was a matter upon which they should be congratulated. It is the pleasant occupation of many of the men representing big money in the eastern and middle states to continually question the safety of money invested in Montana properties. I get such literature almost daily at this office, and when I read it I get boiling mad.

“One of the greatest necessities this state faces today is cheaper money to meet the requirements of the men who are doing the most to upbuild the state and advance its prosperity and development. The representative of one of the largest loan companies in Oregon told me in Helena a few days ago that his company had recently loaned nearly \$5,000,000 in this state to stock men for the purpose of moving



their stock this fall. He said that some of the officers of his company had questioned the wisdom of loaning so much money on Montana stock, but that he had persuaded them it was without question both safe and profitable to do so.

“It is estimated that a group of five northwestern states, of which Montana is one, requires today not less than \$1,000,000,000 for the immediate purpose of replacing old farm buildings, buying new stock and machinery, building fences and purchasing general farm equipment and putting under cultivation new and fertile soil. This is, perhaps, a very modest estimate of the needs of the farmers in the territory mentioned. Uncounted thousands of acres of splendidly fertile land are lying idle today in the state of Montana awaiting only the money and labor necessary to clear, drain, break and till that soil. Necessarily the cultivation of this land will be delayed as long as the farmer is required to pay the rates of interest now demanded upon loans necessary for his success in farming. This question is being discussed in general terms, of course.

I realize that the local conditions surrounding the borrower and his own individuality enter largely in every instance into the question of the loan, but it is unreasonable, unfair and indefensible that in a country where dairying, stock raising, mixed farming, gardening and horticulture are carried on with almost universal success and profit, as is the case in the state of Montana today, that the operators carrying forward these enterprises are compelled to pay

a rate of interest several per cent higher on their loans than their competitors in other states of the northwest are required to pay.

Throughout Montana today the farmers are almost universally in good shape financially. They are improving their property; they are putting up new buildings; they are adding to their live stock; they are improving the grade of that stock; they are paying their bills with regularity and promptness; their lands are increasing in value faster than the farm lands of any other state in the northwest; they are surrounded by natural conditions that make for financial success where industry, sobriety and intelligence are exercised in any moderate degree. Why should they pay a higher rate of interest on their loans to carry on their operations than is paid by farmers in any other section of the northwest?

“Montana needs more cheap money, and this office is doing all it can to direct the attention of the mortgage and loan companies of the eastern and middle western states to the advantages to be obtained in the Montana field.”

And in which said envelope was also then and there enclosed a certain other circular or pamphlet of the following tenor:

“CERTIFIED  
“GUARANTEED  
“NOTES  
“Issued By  
“Northwestern

“Trustee  
“Company

— —

6%

“Capital Stock and Surplus

“Over

“\$500,000.00

— —

“Builders of Montana

— —

“BUSINESS BUILDINGS, HOME, RANCH &

“FARM LOANS

“Certified Guaranteed Notes

“Issued by

“Northwestern Trustee Company

“Certified by Conrad Banking Co., and secured  
by First Mortgages on Great Falls or  
other Montana Real Estate.

— —

“SAFETY and Earning Power are the two important factors to be considered in any investment

“These are the foundation stones upon which the Northwestern Trustee Company builds its business now and in the future.

“The basis of wealth the world over is computed on *land*. Your security is founded on this value.

— —

“S a f e t y   F i r s t

“With an authorized capital and surplus of over \$500,000.00, the Northwestern Trustee Company has by far the strongest personnel of any corpora-

tion of a similar kind in the State of Montana, and offers an investment which has all the safeguards that a sound investment should have.

“CERTIFIED Guaranteed Notes will pay you nearly double the amount of interest paid by savings banks with practically the same security.

“Certified Guaranteed Notes are secured by mortgages on 50% of the valuation of high-grade properties which are passed upon by the Board of Directors of the Northwestern Trustee Co. and the Advisory Board before any loans are allowed, thereby insuring that each loan is made on the most conservative basis.

“Certified Guaranteed Notes paying 6% are as safe an investment as can be made, and are an ideal form of savings funds for widows, orphans, or anyone requiring the highest degree of safety.

“Certified Guaranteed Notes, bearing 6% interest yearly, payable quarterly, can be bought for a period of from 90 days to 20 years.

“90 day to 120 day Certified Guaranteed Note bears 4% interest; 120 day to 360 day Certified Guaranteed Note bears 5% interest; 360 day upward Certified Guaranteed Note bears 6% interest.

“Great care is exercised that the properties back of these mortgages are such that they are steadily increasing in value, thereby insuring a greater margin of safety to the investor in Certified Guaranteed Notes.

“NORTHWESTERN TRUSTEE COMPANY;

“Great Falls, Montana.

“NORTHWESTERN TRUSTEE COMPANY,  
GREAT FALLS, MONTANA

“Security Control Income

“N. T. Co.”

contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

### *THIRD COUNT.*

And the grand jurors aforesaid, on their oaths aforesaid, do further find, charge and present:

That at all times from the twenty-sixth day of December, 1912, to the date of the filing of this indictment, the Northwestern Trustee Company was a corporation organized and existing under and pursuant to the laws of the state of Montana, having an authorized capital stock of the par value of five hundred thousand dollars, divided into fifty thousand shares, each of the value of ten dollars.

That on the 4th day of April, 1914, in the state and district of Montana, and within the jurisdiction of this court, A. M. Alderson, W. C. Rae, R. R. Sidebotham, J. G. G. Wilmot, J. W. Speer, J. W. Bertoglia, H. A. Meyer, J. A. Sampson, M. A. Cort, C. A. Rainwater, C. W. Tobin, W. W. White, E. C. Wills, J. J. Ives and L. D. Clausen, named as defendants herein, knowingly, unlawfully and feloniously had theretofore devised, and intended to devise a scheme and artifice to defraud, that is to say, the same scheme and artifice set forth and described



in the first count of this indictment, to which said first count for said description reference is hereby made the same as if herein fully set forth.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, charge and present, that the said defendants, A. M. Alderson, W. C. Rae, R. R. Sidebotham, J. G. Wilmot, J. W. Speer, D. G. Bertoglio, H. A. Meyer, J. A. Sampson, M. A. Cort, C. A. Rainwater, C. W. Tobin, W. W. White, E. C. Wills, J. J. Ives and L. D. Clausen, so having, as aforesaid, as set forth and described in the first count of this indictment, unlawfully, knowingly and feloniously devised, and intending to devise said scheme and artifice to defraud, in and for executing said scheme and artifice to defraud, and attempting so to do, did on the 4th day of April, 1914, at Great Falls, in the state and district of Montana, wilfully, unlawfully, knowingly, fraudulently and feloniously, place and deposit, and cause to be placed and deposited, in a certain post office of the United States, to wit, the post office at Great Falls, Montana, to be sent and delivered by the post office established of the United States, a certain envelope, upon which said envelope the postage was fully prepaid, which said envelope was addressed to

Mrs. Alice M. Descelles,  
Havre, Montana,

and which said envelope, so addressed, stamped and deposited as aforesaid, contained a certain circular letter of the following tenor, to wit:

“NORTHWESTERN TRUSTEE COMPANY

Incorporated

Authorized Capital Stock and Surplus

\$500,000.00

“Bonds and Investment Securities.

“Farm Mortgage Loans

SIDEBOTHAM & WILMOT

Sole Fiscal Agents

General Offices, Tod Bldg.

Great Falls, Montana

“April 4, 1914

“To the Stockholders

of the Northwestern Trustee Co.:

At a recent meeting of our Board of Directors some of the most prominent men in Montana were elected officers and directors among whom are State Treasurer Wm. C. Rae, elected Secretary and Treasurer and member of the Executive Board, Ex-Lieutenant-Governor W. R. Allen, President of the Montana Fire Insurance Company, and who holds many other prominent positions of trust, elected Director and one of the Vice-Presidents, Albert G. Karcher, President Leidholm-Karcher Clothing Co., elected Director, Ex-Mayor of Great Falls and well-known attorney J. W. Speer elected Director, vice-president, and member of the Executive Board, L. W. Gibson a prominent and well-known stockman of Glasgow, elected a member of the Board of Directors and the writer was elected President, Director and member of the Executive Board.

“We feel that the Northwestern Trustee Com-

pany has a very strong Board of Directors as these men have been eminently successful in their undertakings in this State and are men of high financial standing, honor and integrity. With these men putting their shoulder to the wheel, we feel optimistic and certain about the future of the institution, which has already been built up to a point where there no longer remains a question mark, with its large amount of sound assets.

“The Board of Directors have pledged themselves to work harmoniously and do everything in their power to aid selling stock and to complete the financing.

#### “NORTHWESTERN TRUSTEE COMPANY

##### “Sheet 2

“Their policy will be to keep down the cost of operation and safety will be their first consideration in the investment of the funds of the Company.

“The greatest good to the State of Montana and to the Northwest is money to loan secured by mortgage on real estate and since the beginning of time, such security has been the most reliable and satisfactory. The ready sale in the East of Farm mortgages at five and six percent gives a Farm Mortgage Company unusual opportunity to turn its capital several times a year, making two per cent and better each time it is turned.

“With interest rates in Montana ranging from eight per cent upwards, we feel that this institution should earn good dividends, as companies similar to this have been able to turn their capital eight to

twelve times a year, realizing two per cent and better on each turn.

"We ask your co-operation and would appreciate your writing us a few lines in the form of a letter that might be issued for the purpose of assisting us in the sale of stock and in further financing this Company. If every stock-holder will speak a good word and pull with us, there is no question but that in a very short time, this Company will be classed as one of Montana's strongest financial institutions.

"If there is any point you do not fully understand concerning this Company kindly advise us and we will be glad to supply you with the information.

"Thanking you again for such co-operation as you may be able to give us, we are

"Very truly yours,

"NORTHWESTERN TRUSTEE COMPANY.

"A. M. Alderson,

"President.

"P. S. Kindly fill in the enclosed card, as we are desirous of having full record of all our stock-holders and subscribers."; and in which said envelope there was also enclosed a certain card of the following tenor:

"...Name in Full.....

"Street Address.....

"City.....

"State .....

"Occupation and Title.....;"



and in which said envelope there was also enclosed a certain fac-simile letter of the following tenor:

“MONTANA STATE FAIR

A. J. Breitenstein, Secy.

Helena, Mont.

March sixth 1914

“M. Robt. R. Sidebotham, Pres.,  
Northwestern Trustee Company,  
Great Falls, Montana.

“My Dear Sir:

“For the past year have been conversant with the functions of the Northern Trustee Company, and to one who has had the interest of the development of Montana at heart, can only add that the administrations of your firm, especially mortgage loans, is something that should help wonderfully in this state’s development. The earnings of the investor, as well as the material assistance to the borrower, are two great factors to the prosperity of any community and as this is your company’s plans I am sure that nothing but success can follow it.

“Very truly yours,

“A. J. Breitenstein,

“Secretary.”

“AJB-O”;

and in which said envelope there was also enclosed a certain other fac-simile letter of the following tenor:

“J. W. Speer

Attorney At Law

First National Bank Building

Great Falls, Montana.

“Mr. R. R. Sidebotham,  
President-Northwestern Trustee Co.,  
Great Falls, Montana.

“Dear Sir:

“I am very glad to give my views on the Northwestern Trustee Company, and since its inception here I have been much interested in it. I know of no institution in Great Falls today that has the number of local people behind it as stock-holders as your institution has. I believe that you have some 126 Great Falls stock-holders which speaks for itself, and shows the confidence of our people here.

“A mortgage loan company such as yours and operated along the lines you have carefully planned should be of great benefit to Montana, and at the same time be very profitable to the stockholders.

“I am very well satisfied with my investment, and can see a great future for your institution here, and my only wish is that I will be in a position to avail myself to become a larger stockholder in the future.

“With best wishes, I am

“Very truly yours,

“J. W. Speer.”

contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

#### *FOURTH COUNT.*

And the grand jurors aforesaid, on their oaths aforesaid, do further find, charge and present:

That at all times from the twenty-sixth day of December, 1912, to the date of the filing of this indictment, the Northwestern Trustee Company was a corporation organized and existing under and pursuant to the laws of the state of Montana, having an authorized capital stock of the par value of five hundred thousand dollars, divided into fifty thousand shares, each of the value of ten dollars.

That on the 1st day of June, 1914, in the state and district of Montana, and within the jurisdiction of this court, A. M. Alderson, W. C. Rae, R. R. Sidebotham, J. G. G. Wilmot, J. W. Speer, D. G. Bertoglio, H. A. Meyer, J. A. Sampson, M. A. Cort, C. A. Rainwater, C. W. Tobin, W. W. White, E. C. Wills, J. J. Ives and L. D. Clausen, named as defendants herein knowingly, unlawfully and feloniously had theretofore devised, and intended to devise a scheme and artifice to defraud, that is to say, the same scheme and artifice set forth and described in the first count of this indictment, to which said first count for said description reference is hereby made the same as if herein fully set forth.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, charge and present, that the said defendants, A. M. Alderson, W. C. Rae, R. R. Sidebotham, J. G. G. Wilmot, J. W. Speer D. G. Bertoglio, H. A. Meyer, J. A. Sampson, M. A. Cort, C. A. Rainwater, C. W. Tobin, W. W. White, E. C. Wills, J. J. Ives and L. D. Clausen, so having, as aforesaid, as set forth and described in the first count of this indictment, unlawfully, knowingly and

feloniously devised, and intending to devise said scheme and artifice to defraud, in and for executing said scheme and artifice to defraud, and attempting so to do, did on the 2nd day of June, 1914, at Great Falls, in the state and district of Montana, wilfully, unlawfully, knowingly, fraudulently and feloniously, place and deposit, and cause to be placed and deposited, in a certain post office of the United States, to wit, the post office at Great Falls, Montana, to be sent and delivered by the post office establishment of the United States, a certain envelope, upon which said envelope the postage was fully prepaid, which said envelope was addressed to

Mr. and Mrs. Gus Descelle,

Havre, Montana,

and which said envelope, so addressed, stamped and deposited as aforesaid, contained a certain circular letter of the following tenor:

“NORTHWESTERN TRUSTEE COMPANY

Incorporated

Authorized Capital Stock and Surplus

\$500,000.00

“Bonds and Investment Securities

“Farm Mortgage Loans

SIDEBOTHAM & WILMOT

Sole Fiscal Agents

General Offices, Tod Bldg.

Great Falls, Montana

June 1, 1914.

“TO THE STOCKHOLDERS OR SUBSCRIBER  
ADDRESSED:

“The Company is making much progress. The Fiscal Agents’ Department has brought into the Company over 75 new stockholders in the last 30 to 40 days, and at no time in the history of the institution has our business looked more promising.

“The funds of the Company are being loaned solely on first mortgages as fast as they are paid in, and under our system of loaning it is necessary that 5 stockholders in the community where the loan is granted shall send us a written appraisal of the *value* property, and no loans shall be granted for more than 40% of a salable valuation of said property.

“The Company is now operating its business at a very economical cost. None of the officers or directors are under salary and the only fixed charge is that of our bookkeeper and stenographer, which is \$100.00 per month, and office rent, which now amounts to \$15.00 per month.

“Your earnest co-operation is respectfully solicited in assisting us and the Fiscal Agents in the sale of stock and in making collections due us from subscribers. There are now over 450 stockholders and subscribers and we are in position to make loans.

“Enclosed you will find a card which we are desirous of having you fill out, if you have not already done so, which will give us complete information as to your address and occupation. A great many of the stockholders have written us complimentary letters as to their views of the Company and these letters are of much benefit to the institution.



“Thanking you again for your earnest co-operation, we are,

“Yours very truly,

“NORTHWESTERN TRUSTEE COMPANY,

“Per A. M. Alderson,

President.

“C”

and which said envelope also contained a certain facsimile letter of the following tenor:

“THE STATE OF MONTANA

“Treasurer’s Office

“Helena

“William C. Rae,  
Treasurer.

February 7, 1913.

“My dear Mr. Sidebotham:

Northwestern Trustee Company,  
Great Falls, Montana.

“My dear Mr. Sidemotham:

“It is a matter of common knowledge among business men and investors generally that a farm mortgage loan company of high grade, clean standing, such as yours, offers an avenue for investment that is at once the safest and most remunerative of any business to which the investor does not devote his entire time, intelligence and energy. The land being the original source of all wealth, is the safest security for loans. The ready sale in the east of farm mortgages at five and six per cent gives a farm mortgage company unusual opportunity to turn its capital several times a year, making two per cent

and better each time it is turned. I am highly pleased with my interests in the Northwestern Trustee Company.

“Very truly yours,

“Wm. C. Rae,

“State Treasurer.”

and which said envelope also contained a certain other facsimilie letter of the following tenor:

“State of Montana

—Office of—

Secretary of State

A. M. Alderson, Secretary

“Copeland C. Burg, Deputy.

“1-27-14.

“Mr. Robert R. Sidebotham,

Northwestern Trustee Company,

Great Falls, Montana.

“Mr. Robert R. Sidebotham, president,

“I learn with pleasure of the substantial progress made by the Northwestern Trustee Company, in which I am very much interested. All alert investors realize that no business offers opportunities so great in a rapidly developing State, such as Montana, as is offered by a mortgage loan company.

“The rapidity with which capital may be turned, and the absolute safety of investments, combine to make the farm mortgage loan business exceptionally attractive.

“It is a fact supported by reports and statistics, that large mortgage loan companies of the East conduct their business at an expense of a fraction of

one per cent. The New York Life Insurance Company's last report shows that on farm mortgage loans the Company made a new earning of 5.58 per cent. This earning was made in portions of the country where interest rates are low and the company did not turn their loans, but retained them as a permanent investment.

"In a State like Montana, where interest rates are much greater than in other portions of the country, a company making farm mortgage loans and turning them rapidly into eastern channels at much lower rates of interest, cannot help but prove eminently successful. This is true especially where the loans are carefully investigated and subject to several checkings, as is the policy of this Company.

"Wishing you continued success, I beg to remain

"Very truly yours,

"A. M. Alderson."

and which said envelope also contained a certain other fac simile letter of the following tenor:

"B. F. Olden President

"J W. Robinson, Cashier

"Geo. W. Green, Vice President

"Chas. A. Cairns, Asst. Cashier.

"John D. Daly, Vice President.

"Fay D. Young, Asst Cashier.

"IDAHO TRUST AND SAVINGS BANK

"Capital \$200,000.00

Boise, Idaho.

March 7th, 1914.

"Mr. Robert R. Sidebotham,

Vice Pres. Northwestern Trustee Co.,  
Great Falls, Montana.

“My dear Mr. Sidebotham:

“It is indeed gratifying to me, as a stockholder, to learn from time to time of the splendid success that is being made by the Northwestern Trustee Company. The great demand for foreign capital to develop our farm lands on a farm mortgage loan basis is self evident everywhere in the Northwest,

“I understand that there are over 300 stockholders in your Company to-day, for this, and the high character of the men behind it, you and Mr. Wilmot, as Fiscal Agents, are certainly to be congratulated.

“In the near future, the Northwestern Trustee Company should be a strong financial institution and would be pleased to know of your success and your splendid company as well,

“With kind regards, I am

“Very truly yours,

“FAY D. YOUNG”;

“F.D.Y.-M.”

contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

#### *FIFTH COUNT.*

And the grand jurors aforesaid, on their oaths aforesaid, do further find, charge and present:

That at all times from the twenty-sixth day of December, 1912, to the date of the filing of this indictment, the Northwestern Trustee Company was a corporation organized and existing under and pur-

suant to the laws of the state of Montana, having an authorized capital stock of the par value of five hundred thousand dollars, divided into fifty thousand shares, each of the value of ten dollars.

That on the 24th day of July, 1914, in the state and district of Montana, and within the jurisdiction of this court, A. M. Alderson, W. C. Rae, R. R. Sidebotham, J. G. G. Wilmot, J. W. Speer, D. G. Bertoglio, H. A. Meyer, J. A. Sampson, M. A. Cort, C. A. Rainwater, C. W. Tobin, W. W. White, E. C. Wills, J. J. Ives and L. D. Clausen, named as defendants herein, knowingly, unlawfully and feloniously had theretofore devised, and intended to devise a scheme and artifice to defraud, that is to say, the same scheme and artifice set forth and described in the first count of this indictment, to which said first count for said description reference is hereby made the same as if herein fully set forth.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, charge and present, that the said defendants, A. M. Alderson, W. C. Rae, R. R. Sidebotham, J. G. G. Wilmot, J. W. Speer, D. G. Bertoglio, H. A. Meyr, J. A. Sampson, M. A. Cort, C. A. Rainwater, C. W. Tobin, W. W. White, E. C. Wills, J. J. Ives and L. D. Clausen, so having, as aforesaid, as set forth and described in the first count of this indictment, unlawfully, knowingly and feloniously devised, and intending to devise said scheme and artifice to defraud, in and for executing said scheme and atrice to defraud, and attempting so to do, did on the 24th day of July, 1914,



at Great Falls, in the state and district of Montana, wilfully, unlawfully, knowingly, fraudulently and feloniously, place and deposit, and cause to be placed and deposited in a certain post office of the United States, to wit, the post office at Great Falls, Montana, to be sent and delivered by the post office establishment of the United States, a certain envelope, upon which said envelope the postage was fully prepaid, which said envelope was addressed to

Mrs. Maude E. Berg,

Stryker Mont.

and in which said envelope there was enclosed a certain circular letter of the following tenor:

“NORTHWESTERN TRUSTEE COMPANY

(Incorporated)

Authorized Capital Stock and Surplus over

\$500,000.00

Home Office

Great Falls, Montana.

Branch Offices in Principal Cities and Towns in  
Montana.

Bond, Mortgage and Investment Securities.

“Hon. A. M. Alderson, President

Robt. R. Sidebotham, Vice-President

D. G. Bertoglio, Vice-President

W. R. Allen, Vice-President

J. W. Speer, Vice-President

Wm. C. Rae, Secretary & Treasurer.

“J. G. G. Wilmot, Chairman

J. Henry Evers, Director.

B. W. Porter, Director

W. A. Patterson, Director,  
L. W. Gibson, Director,  
Henry A. Meyer, Director,  
Albert G. Karcher, Director.

“Great Falls, Montana

“Jul 24 1914.

“Dear Sir:

“Enclosed you will find a reproduction from an article published in the Great Falls Tribune of recent date, which will give you some idea of the development of our institution. Your earnest co-operation is solicited at this time.

“We have funds in the treasury for farm loans, and if you or any of your friends wish a loan, kindly write us.

“In the past few weeks many new stockholders have been added and there are to-day over 500 stockholders.

“Yours very truly,

“NORTHWESTERN TRUSTEE COMPANY

“Per Wm. C. Rae,

“Sec. & Treas.”

and in which said envelope there was also enclosed a certain printed advertisement of the following tenor:

“What Montana’s Best Newspaper Says  
of the Northwestern Trustee Co.

---

“The Great Falls Daily Tribune

“Established May 16, 1887

“The Tribune of July 11, 1914, has the following:

“GROWING INTO STATE  
“WIDE CONCERN

---

“Local Mortgage Institution Be-  
coming Organized all Over  
State of Montana

---

“Robert R. Sidebotham, vice president of the Northwestern Trustee Company, returned yesterday from an extended trip over the state in the interests of the company, and when interviewed by The Tribune, Mr. Sidebotham said, “We are rapidly organizing our institution in nearly every section of Montana. We have today over 500 stockholders and subscribers and have local loan boards in nearly 100 communities.

“We are developing our institution along the lines of the old time land banks of Germany and France. Under this system we appoint in each community a local loan association or board of stockholders who appraise and handle the loans for their respective communities. This board is made up of ranchers and farmers who are thoroughly familiar with the land and capable of making the best appraisement possible.

“This company has already started its operations and is now ready to make loans running from three to ten years. This state can consume nearly \$150,000,000 worth of farm mortgage loans and it is our plan to get large volumes of eastern and foreign

capital and loan it out in Montana at a trifle higher rate of interest.

“Land banks have been operated for nearly 150 years in Europe and they have been so successful that a failure never has been recorded and they have become the most successful of banking companies wherever they are operated.”

---

contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

#### *SIXTH COUNT.*

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, charge and present:

That at all times from the twenty-sixth day of December, 1912, to the date of the filing of this indictment, the Northwestern Trustee Company was a corporation organized and existing under and pursuant to the laws of the state of Montana, having an authorized capital stock of the par value of five hundred thousand dollars, divided into fifty thousand shares, each of the value of ten dollars.

That on the 1st day of October, 1914, in the state and district of Montana, and within the jurisdiction of this court, A. M. Alderson, W. C. Rae, R. R. Sidebotham, J. G. G. Wilmot, J. W. Speer, D. G. Bertoglio, H. A. Meyer, J. A. Sampson, M. A. Cort, C. A. Rainwater, C. W. Tobin, W. W. White, E. C. Wills, J. J. Ives and L. D. Clausen, named as defendants herein, knowingly, unlawfully, and feloniously had theretofore devised, and intended to de-

wise a scheme and artifice to defraud, that is to say, the same scheme and artifice set forth and described in the first count of this indictment, to which said first count for said description reference is hereby made the same as if herein fully set forth.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, charge and present, that the said defendants, A. M. Alderson, W. C. Rae, R. R. Sidebotham, J. G. G. Wilmot, J. W. Speer, D. G. Bertoglio, H. A. Meyer, J. A. Sampson, M. A. Cort, C. A. Rainwater, C. W. Tobin, W. W. White, E. C. Wills, J. J. Ives, and L. D. Clausen, so having, as aforesaid, as set forth and described in the first count of this indictment, unlawfully, knowingly and feloniously devised, and intending to devise said scheme and artifice to defraud, and attempting so to do, did on the 2nd day of October, 1914, at Great Falls, in the state and district of Montana, wilfully, unlawfully, knowingly, fraudulently and feloniously place and deposit, and cause to be placed and deposited, in a certain post office of the United States, to wit, the post office at Great Falls, Montana, to be sent and delivered by the post office establishment of the United States, a certain envelope, upon which said envelope the postage was fully prepaid, which said envelope was addressed to

S. DURAND,

St. Ignatius, Mont.

and which said envelope, so addressed, stamped and deposited as aforesaid, contained a certain circular letter of the following tenor:



Northwestern Trustee Company  
(Incorporated)

Authorized Capital Stock and Surplus over  
\$500,000.00

Home Office

Great Falls, Montana.

Branch Offices in Principal Cities and Towns in  
Montana

Bond, Mortgage and investment Securities.

“Hon. A. M. Alderson, President.

Robt. R. Sidebotham, Vice-President

D. G. Bertoglio, Vice-President

W. R. Allen, Vice President

J. W. Speer, Vice-President

Wm. C. Rae, Secretary & Treasurer

“J. G. G. Wilmot, Chairman

J. Henry Evers, Director.

B. W. Porter, Director

W. A. Patterson, Director.

L. W. Gibson, Director.

Henry A. Meyer, Director.

Albert G. Karcher, Director.

“Great Falls, Montana, Oct. 1, 1914.

“TO THE STOCKHOLDER OR SUBSCRIBER  
ADDRESSED:

“At a meeting of the Board of Directors held on the 25th day of September the selling price of the Company stock was advanced from \$20.00 to \$30.00 per share.

“The progress of our institution has been rapid and to-day there are over 600 stockholders and the

number is increasing daily.

“The Company now plans to extend its operations into Washington, Oregon, Idaho and Wyoming, and it is believed by those most deeply interested that we will surely be the largest institution of its kind in the Northwest.

“The Company’s funds are being loaned out, as fast as they are paid in, on first mortgages on Montana farms and ranch property.

“We have provided for the old stockholders a small block of stock that may be purchased by them within fifteen days from date, inasmuch as the selling price of the stock was increased without their having prior notice of such increase. You can purchase the stock at \$20.00 per share on a cash basis or easy terms as low as 10% cash and the balance on monthly, quarterly or semi-annual payments, having as long as one year for the payment of same.

“We are enclosing a separate application for the purchase of stock and are willing for our old subscribers to make their own terms. We will send back the necessary papers to be signed up at \$20.00 per share. This purchase can only be made on condition that it reaches our office within 15 days from this date.

“Thanking you for your earnest co-operation, we are,

“Yours very truly,

“SIDEBOTHAM & WILMOT,

“Sole Fiscal Agents.

“By J. Hosking.”

and which said envelope also contained a blank application for the purchase of stock of the Northwestern Trustee Company, which said application was in the words and figures following, to wit:

“APPLICATION FOR STOCK IN THE  
NORTHWESTERN TRUSTEE COMPANY.

“To Sidebotham & Wilmot,

Fiscal Agents,

Great Falls, Montana.

“I hereby agree to purchase.....shares  
of Northwestern Trustee Company stock at \$20.00  
per share, and agree to pay for same as follows:

.....  
.....

“All within one year after date.

“Signature .....

“Occupation .....

“P. O. Address.....

“City & State.....

“Date .....

“This application for stock must reach our office  
on or before October 15, 1914.

“Insert the terms of payment that will be most  
convenient for you and upon receipt of the applica-  
tion we will execute the proper papers for you to  
sign and mail to you.

“Make all checks and moneys payable to Sidebot-  
ham & Wilmot, Sole Fiscal Agents, Tod Bldg.,  
Great Falls, Montana.

“SIDEBOTHAM & WILMOT

“Sole Fiscal Agents.”

contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

*SEVENTH COUNT.*

And the grand jurors aforesaid, on their oaths aforesaid, do further find, charge and present:

That all times from the twenty-sixth day of December, 1912, to the date of the filing of this indictment, the Northwestern Trustee Company was a corporation organized and existing under and pursuant to the laws of the state of Montana, having an authorized capital stock of the par value of five hundred thousand dollars, divided into fifty thousand shares, each of the value of ten dollars.

That on the 18th day of December, 1914, in the state and district of Montana, and within the jurisdiction of this court, A. M. Alderson, W. C. Rae, R. R. Sidebothan, J. G. G. Wilmot, J. W. Speer, D. G. Bertoglio, H. A. Meyer, J. A. Sampson, M. A. Cort, C. A. Rainwater, C. W. Tobin, W. W. White, E. C. Wills, J. J. Ives, and L. D. Clausen, named as defendants herein, knowingly, unlawfully and feloniously had theretofore devised, and intended to devise a scheme and artifice to defraud, that is to say, the same scheme and artifice set forth and described in the first count of this indictment, to which said first count for said description reference is hereby made the same as if herein fully set forth.

And the grand jurors aforesaid, upon their oaths

aforesaid, do further find, charge and present, that the said defendants, A. M. Alderson, W. C. Rae, R. R. Sidebotham, J. G. G. Wilmot, J. W. Speer, D. G. Bertoglio, H. A. Meyer, J. A. Sampson, M. A. Cort, C. A. Rainwater, C. W. Tobin, W. W. White, E. C. Wills, J. J. Ives and L. D. Clausen, so having, as aforesaid, as set forth and described in the first count of this indictment, unlawfully, knowingly and feloniously devised, and intending to devise said scheme and artifice to defraud, in and for executing said scheme and artifice to defraud, and attempting so to do, did on the 18th day of December, 1914, at Great Falls, in the state and district of Montana, wilfully, unlawfully, knowingly, fraudulently and feloniously, place and deposit, and cause to be placed and deposited, in a certain post office of the United States, to wit, the post office at Great Falls, Montana, to be sent and delivered by the post office establishment of the United States, a certain envelope, upon which said envelope the postage was fully prepaid, which said envelope was addressed to

Mr. H. C. Walker,  
Poplar, Montana.

and which said envelope, so addressed, stamped and deposited as aforesaid, contained a certain letter and writing in the words and figures following, to wit:

“NORTHWESTERN TRUSTEE COMPANY  
(Incorporated)

Authorized Capital Stock and Surplus over  
\$500,000.00



Home Office

Great Falls, Montana.

Branch Offices in Principal Cities and Towns in  
Montana.

Bond, Mortgage, and Investment Securites.

“Hon. A. M. Alderson, President.

Robt. R. Sidebotham, Vice-President

D. G. Bertoglio, Vice-President

W. R. Allen, Vice-President

J. W. Speer, Vice-President

Wm. C. Rae, Secretary & Treasurer

J. G. G. Wilmot, Chairman

J. Henry Evers, Director

W. B. Porter, Director

W. A. Patterson, Director

L. W. Gibson, Director

Henry A. Meyer, Director.

Albert G. Karcher, Director.

“Great Falls, Montana, Dec. 18, 1914.

“H. C. Walker,

Poplar, Mont.

“Dear Sir:

“This office is at a loss to know why you have not paid your promissory note and lived up to your signed contract and subscription. You are possibly aware of the fact that the stock of this Company is selling rapidly at \$30.00 per share, which is \$10.00 more per share than you paid for your stock, and that the institution is on a solid financial basis. Our funds are being invested in farm mortgages.

“We are organizing loan boards in each county.

These loan boards appraise the loans in their respective localities in accordance with the policy of the institution, which is not to accept loans until they have been first approved by the stockholders in that vicinity and appraised again by the Company's appraiser from Great Falls. We are building up a solid organization and we are securing the best of the old-time sheep and cattle men of Montana and we are drawing into our business a class of clients to do business with in the future whose patronage many institutions have spent years in trying to secure.

"The Company is extending its field of operations into adjoining states and now have approximately 700 stockholders and subscribers. Considerably over 100 new subscribers have been added in the last few weeks from Powell and Deer Lodge Counties.

"We feel that the only reason you are not paying is on account of a lack of knowledge on your part of the actual conditions which exist in the Company. If there is any reason why you have not met your obligations, we will appreciate your writing us. We have been more than lenient with you and have not desired to bring about forfeiture, as provided for in your subscription, *and cause you to lose every dollar you have put in, but unless this matter is immediately taken care of it will be necessary for us to bring suit or forfeit your stock.*

"Yours very truly,

"NORTHWESTERN TRUSTEE CO.

“By M. A. Cort,

“Assit. Sec. & Treas.”

contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

*EIGHTH COUNT.*

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, charge and present:

That at all times from the twenty-sixth day of December, 1912, to the date of the filing of this indictment, the Northwestern Trustee Company was a corporation organized and existing under and pursuant to the laws of the state of Montana, having an authorized capital stock of the par value of five hundred thousand dollars, divided into fifty thousand shares, each of the value of ten dollars.

That on the 12th day of October, 1915, in the state and district of Montana, and within the jurisdiction of this court, A. M. Alderson, W. C. Rae, R. R. Sidebotham, J. G. G. Wilmot, J. W. Speer, D. G. Bertoglio, H. A. Meyer, J. A. Sampson, M. A. Cort, C. A. Rainwater, C. W. Tobin, W. W. White, E. C. Wills, J. J. Ives, and L. D. Clausen, named as defendants herein, knowingly, unlawfully and feloniously had theretofore devised, and intended to devise, a scheme and artifice to defraud, that is to say, the same scheme and artifice set forth and described in the first count of this indictment, to which said first count for said description reference is hereby made the same as if herein fully set forth.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, charge and present, that the said defendants, A. M. Alderson, W. C. Rae, R. R. Sidebotham, J. G. G. Wilmot, J. W. Speer, D. G. Bertoglio, H. A. Meyer, J. A. Sampson, M. A. Cort, C. A. Rainwater, C. W. Tobin, W. W. White, E. C. Wills, J. J. Ives, and L. D. Clausen, so having, as aforesaid, as set forth and described in the first count of this indictment, unlawfully, knowingly and feloniously devised, and intending to devise said scheme and artifice to defraud, and attempting so to do, did on the 12th day of October, 1915, at Great Falls, in the estate and district of Montana, wilfully, unlawfully, knowingly, fraudulently and feloniously place and deposit, and cause to be placed and deposited, in a certain post office of the United States, to wit, the post office at Great Falls, Montana, to be sent and delivered by the post office establishment of the United States, a certain envelope upon which said envelope the postage was fully prepaid, which said envelope was addressed to

Mr. J. A. Urbanowicz,

Missoula, Montana.

C/o U. S. F. S.

which said envelope, so addressed, stamped and deposited as aforesaid, contained a certain letter and writing in the words and figures following, to wit:

“NORTHWESTERN TRUSTEE COMPANY  
(Incorporated)

Authorized Capital Stock and Surplus Over  
\$500,000.00

Home Office  
Great Falls, Montana.

Branch Offices in Principal Cities and Towns in  
Montana.

Bond, Mortgage and Investment Securities.

“Hon. A. M. Alderson, President  
Robt. R. Sidebotham, Vice-President  
Wm. C. Rae, Secretary & Treasurer  
M. A. Cort, Asst. Sec. & Treas.

“J. W. Speer, Director  
A. M. Alderson, Director  
J. G. G. Wilmot, Director  
W. R. Allen, Director,  
Wm. C. Race, Director  
Robt. R. Sidebotham, Director  
D. G. Bertoglio, Director.

Great Falls, Montana,

October 12, 1915.

“Mr. J. A. Urbanowicz,  
Missoula, Montana.

“Dear Sir:

“We are in receipt of your letter of the 8th inst. regarding the payment of a dividend on your stock. When a dividend is declared, it will be declared by our stockholders. There were a number of them present this year at the meeting, and while our surplus and Undivided Profit account showed a balance of over \$17,000, which would have enabled us to pay a dividend, they deemed it best to use the money for loans, etc., for at least another year. When a dividend is paid, it will be paid from the time you sub-



scribed for your stock. We therefore ask that you remit the \$19.35 interest asked for without further delay, so that this transaction may be closed.

“Thanking you, we are,

“Very truly yours,

“NORTHWESTERN TRUSTEE COMPANY,

“Per M. A. Cort,

Asst. Treas.”;

contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

#### NINTH COUNT.

and the grand jurors aforesaid, on their oaths aforesaid, do further find, charge and present:

That at all times from the twenty-sixth day of December, 1912, to the date of the filing of this indictment, the Northwestern Trustee Company was a corporation organized and existing under and pursuant to the laws of the state of Montana, having an authorized capital stock of the par value of five hundred thousand dollars, divided into fifty thousand shares, each of the value of ten dollars.

That on the 6th day of October, 1915, in the state and district of Montana, and within the jurisdiction of this court, A. M. Alderson, W. C. Rae, R. R. Sidebotham, J. G. G. Wilmot, J. W. Speer, D. C. Bertoglio, H. A. Meyer, J. A. Sampson, M. A. Cort, C. A. Rainwater, C. W. Tobin, W. W. White, E. C. Wills, J. J. Ives, and L. D. Clausen, named as defendants herein knowingly, unlawfully and feloniously had theretofore devised and intended to devise

a scheme and artifice to defraud, that is to say, the same scheme and artifice to defraud, set forth and described in the first count of this indictment, to wihc said first count for said description reference is hereby made the same as if herein full set forth.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, charge and present, that the said defendants, A. M. Alderson, W. C. Rae, R. R. Sidebotham, J. G. G. Wilmot, J. W. Speer, D. G. Betoglio, H. A. Meyer, J. A. Sampson, C. A. Rainwater, C. W. Tobin, W. W. White, E. C. Wills, J. J. Ives, and L. D. Clausen, so having, as aforesaid, as set forth and described in the first count of this indictment, unlawfully, knowingly, and feloniously devised, and intending to devise said scheme and artifice to defraud, in and for executing said scheme and artifice to defraud, and attempting so to do, did on the 6th day of October, 1914, at Great Falls, in the State and district of Montana, wilfully, unlawfully, knowingly, fraudulently and feloniously, place and deposit, and cause to be placed and deposited, in a certain post office of the United States, to wit, the post office at Great Falls, Montana, to be sent and delivered by the post office establishment of the United States, a certain envelope, upon which said envelope the postage was fully prepaid, which said envelope was addressed to

Mr. J. A. Urbanowicz,  
Missoula, Mont.

which said envelope, so addressed, stamped and deposited as aforesaid, contained a certain letter and

writing in the words and figures following, to wit:

“NORTHWESTERN TRUSTEE COMPANY  
(Incorporated)

Authorized Capital Stock and Surplus Over  
\$500,000.00

Home Office

Great Falls, Montana.

Branch Offices in Principal Cities and Towns in  
Montana.

Bond, Mortgage and Investment Securities.

“Hon. A. M. Alderson, President,  
Robt. R. Sidebotham, Vice-President,  
Wm. C. Rae, Secretary and Treasurer,  
M. A. Cort, Ass't Sec. & Treas.

“J. W. Spear, Director,  
A. M. Alderson, Director,  
J. G. G. Wilmot, Director,  
W. R. Allen, Director,  
Wm. C. Rae, Director,  
Robt. R. Sidebotham, Director,  
D. G. Bertoglio, Director.

“Great Falls, Montana,

Oct. 6, 1915.

“Mr. J. A. Urbanowicz,  
Missoula, Montana.

“Dear Sir:

“We acknowledge receipt of your letter of the 4th enclosing check for \$300.00. This pays the principal, but the note bears interest at 8% from December 16, 1914. This interest to date amounts to \$19.35 to date. Upon receipt of same your cancelled note

and stock will be mailed to you.

“You probably do not understand that your stock was issued December 16, 1914. It has been held as collateral to your notes. As you are receiving the same benefits as though you had paid all cash at the time you gave your subscription, interest is charged on the amount unpaid. All notes given for stock bear 8% interest.

“Trusting that the matter is clear to you, we are,  
Yours very truly,

“NORTHWESTERN TRUSTEE CO.

“Per M. A. CORT,

“Ass’t Treas.”;

contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

#### *TENTH COUNT.*

And the grand jurors aforesaid, upon their oaths aforesaid, do further find charge and present:

That at all times from the twenty-sixth day of December, 1912, to the date of the filing of this indictment, the Northwestern Trustee Company was a corporation organized and existing under and pursuant to the laws of the State of Montana, having an authorized capital stock of the par value of five hundred thousand dollars, divided into fifty thousand shares, each of the value of ten dollars.

That on the 8th day of December, 1915, in the State and district of Montana, and within the jurisdiction of this court, A. M. Alderson, W. C. Rae, R. R. Sidebotham, J. G. G. Wilmot, J. W. Speer,

D. G. Bertoglio, H. A. Meyer, J. A. Sampson, M. A. Cort, C. A. Rainwater, C. W. Tobin, W. W. White, E. C. Wills, J. J. Ives and L. D. Clausen, named as defendants herein, knowingly, unlawfully and feloniously had theretofore devised, and intended to devise, a scheme and artifice to defraud, that is to say, the same scheme and artifice set forth and described in the first count of this indictment, to which said first count for said description reference is hereby made the same as if herein fully set forth.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, charge and present, that the said defendants, A. M. Alderson, W. C. Rae, R. R. Sidebotham, J. G. G. Wilmot, J. W. Speer, D. C. Bertoglio, H. A. Meyer, J. A. Sampson, M. A. Cort, C. A. Rainwater, C. W. Tobin, W. W. White, E. C. Wills, J. J. Ives and L. D. Clausen, so having, as aforesaid, as set forth and described in the first count of this indictment, unlawfully, knowingly and feloniously devised, and intending to devise said scheme and artifice to defraud, and attempting so to do, did on the 8th day of December 1915, at Great Falls, in the State and District of Montana, willfully, unlawfully, knowingly, fraudulently and feloniously place and deposit and cause to be placed and deposited in a certain post office of the United States, to wit, the post office at Great Falls, Montana, to be sent and delivered by the post office establishment of the United States, a certain envelope, upon which said envelope the postage was fully prepaid, which said envelope is addressed to



Mrs. Maude E. Berg,  
Stryker, Mont.

which said envelope, so addressed, stamped and deposited as aforesaid, contained a certain letter and writing in the words and figures following, to wit:

“NORTHWESTERN TRUSTEE COMPANY  
(Incorporated)

Authorized Capital Stock and Surplus Over  
\$500,000.00

Home Office

Great Falls, Montana.

Branch Offices in Principal Cities and Towns in  
Montana.

Bond, Mortgage and Investment Securities.

“Hon. A. M. Alderson, President

Robt. R. Sidebotham, Vice-President

D. G. Bertoglio, Vice-President

W. R. Allen, Vice-President

J. W. Speer, Vice President

Wm. C. Rae, Secretary & Treasurer

J. G. G. Wilmot, Chairman

J. Henry Evers, Director

B. W. Porter, Director

W. A. Patterson, Director

L. W. Gibson, Director

Henry A. Meyer, Director

Albert G. Karcher, Director.

“Great Falls, Montana.

“Dec. 8, 1915.

“Mrs. Maude E. Berg,  
Stryker, Montana.

“Dear Madam:

“The following payments will be due from you on December 18th:

“November 18th payment.....\$15.00

“December 18th payment..... 15.00

Interest on \$200.00 from 10/18 to 12/18.... 2.65

---

“Total .....\$32.65

“Yours truly,

“NORTHWESTERN TRUSTEE CO.

“Per M. A. Cort

“Asst. Treas.”

contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

### *ELEVENTH COUNT.*

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, charge and present:

That at all times from the twenty-sixth day of December, 1912, to the date of the filing of this indictment, the Northwestern Trustee Company was a corporation organized and existing under and pursuant to the laws of the state of Montana, having an authorized capital stock of five hundred thousand dollars, divided into fifty thousand shares, each of the par value of ten dollars.

That on April 1st, 1914, in the state and district of Montana, and within the jurisdiction of this court, A. M. Alderson, W. C. Rae, R. R. Sidebotham, J. G. G. Wilmot, J. W. Speer, D. G. Bertoglio, H. A. Meyer, J. A. Sampson, M. A. Cort, C. A. Rain-

water, C. W. Tobin, W. W. White, E. C. Wills, J. J. Ives and L. D. Clausen, named as defendants herein, and divers other persons to the grand jurors unknown, unlawfully, wilfully and feloniously did conspire together to commit offenses against the United States in and by devising and intending to devise a scheme and artifice to defraud John Simpson, J. A. Ebaugh, J. P. Leib, John W. Janssen, Jane E. Begerlein and George W. Mulry, and divers other persons whose names are to the grand jurors unknown, of their money and property, in and by inducing, by false and fraudulent representations and pretenses, and by fraudulent artifices and devices, said persons so intended to be defrauded, to part with such money and property in the purchase of shares of the stock of said Northwestern Trustee Company, with the intent, on the part of the said defendants, to secure for themselves and convert to their own use a large part of such money and property, the exact amount of said money and property so intended to be secured and converted being to the grand jurors unknown, said scheme and artifice being fully and particularly set forth hereinafter, to be effected by opening and intending to open correspondence and communication with the said John Simpson, J. A. Ebaugh, J. P. Leib, John W. Janssen, Jane E. Begerlein and George W. Mulry, and divers other persons whose names are to the grand jurors unknown, by means of the post office establishment of the United States, and by inciting said John Simpson, J. A. Ebaugh, J. P. Leib, John W.

Janssen, Jane E. Begerlein and George W. Mulry, and said divers other persons, to open communications with them, the said defendants, so devising and intending; and it was a part of said conspiracy of said defendants to execute the said scheme and artifice, and to attempt so to do, by placing and causing to be placed in post offices of the United States, to wit, the post office at Great Falls, Montana, and divers other post offices of the United States to the grand jurors unknown, letters, circulars, pamphlets, and other writings, to be sent and delivered by said post office establishment to the United States.

And it was a part of said scheme and artifice which said defendants and said divers persons to the grand jurors unknown so conspired to devise and executed to sell, and to cause said Northwestern Trustee Company, to sell, to said persons so intended to be defrauded, shares of stock of said Northwestern Trustee Company, and to secure for themselves, and to convert to their own use, a large part of the money and property paid in the purchase of said stock by said persons so intended to be defrauded, the exact amount of said part being to the grand jurors unknown; and said defendants, for the purpose of inducing said persons, so intended to be defrauded, to purchase said stock so intended to be sold to them, intended falsely and fraudulently to represent to said persons, and to each of them, and to <sup>induce</sup> ~~include~~ them to believe, that said stock to be sold as aforesaid, and all of it, was treasury stock

of said company; that the money and property paid by said persons, so intended to be defrauded, in the purchase of said stock would go into the treasury of said company and would be used to carry on, extend and expand the business of said company; that only treasury stock of said company was on the market; thereby enabling said company to sell said stock and secure from such sales sufficient funds with which to carry on, extend and expand its business to the benefit of the stockholders; that said company was engaged in carrying on a banking business in connection with its other business and was on a dividend paying basis and that said company would declare and pay a dividend of not less than eight per cent. on its capital stock and surplus within one year after the purchase of said stock by said persons so intended to be defrauded; and that said company would declare and pay a dividend of not less than eight per cent. on its capital stock and surplus each year thereafter; and that said stock would rapidly increase in value; and that an investment in the stock of said Northwestern Trustee Company would be a safe, sound and secure investment and that it would be the safest investment in the world; and that there was no chance for the purchasers of said stock to lose; and that said company was in a flourishing condition.

And each and all of the aforesaid representations, as the defendants well knew, would be false and fraudulent, and the said defendants intended thereby to deceive said persons so intended to be



defrauded, and to induce said persons to part with their money and property in the purchase of said stock as aforesaid; and in deed and in truth, it was part of said scheme and artifice of said defendants that a large part of said stock intended to be sold as aforesaid, would be their own personal holdings in said company; and it was part of said scheme and artifice of said defendants to effect the sale of said personal stock by representing that the same was treasury stock, whereas, in truth and in fact, said defendants intended to convert the proceeds of said sales to their own use; and it was part of said scheme and artifice of said defendants that the remaining part of said stock which said defendants intended to sell, and cause to be sold, as aforesaid, should be treasury stock of said company; and it was part of said scheme and artifice that less than seventy per cent. of the moneys and property paid for said treasury stock of said company, by said persons so intended to be defrauded, should be paid into the treasury of said company, and that the balance should be received and retained by said defendants to cover expenses of said sales and as profits and commissions for themselves thereon, but the exact amount of personal stock, the exact amount of treasury stock and the relative proportions of personal stock and treasury stock which said defendants so intended to sell and cause to be sold is to the grand jurors unknown; and whereas, in truth and in fact, as the said defendants well knew, the said Northwestern Trustee Company was not engaged in

the banking business, and the said company was not on a business paying basis and would not and could not declare a dividend of any amount whatever on either its capital stock, or on its capital stock and surplus, within one year from the date of the purchase of said stock by said persons so intended to be defrauded, and would not and could not declare a dividend of eight per cent., or any other amount, on its capital stock and surplus each year thereafter; and whereas, in truth and in fact, as said defendants well knew, an investment in the stock of said company was not and would not be a safe, sound and secure investment, and that said company was not in a flourishing condition;

And it was further a part of said scheme and artifice, which said defendants and said divers other persons to the grand jurors unknown, so conspired to devise and execute, to make, and to cause the officers and stockholders and directors of said Northwestern Trustee Company, to make advances, from time to time, in the price at which said stock was to be so sold as aforesaid, and to falsely and fraudulently represent to said persons, so intended to be defrauded, and to induce them to believe that said advances in the selling price of said stock were based upon and represented a corresponding increase in the real intrinsic value of said stock and in the assets and profits of said company, and that said advances in the selling price of said stock, over and above the par value of ten dollars per share, would create a large surplus fund for said Northwestern

Trustee Company so as to enable said company to carry on and rapidly extend and expand its business, and that all amounts paid for said stock, over and above the par value thereof, would be paid into the treasury of said company and would constitute such surplus fund of said company, and thereby induce said persons, so intended to be defrauded, to part with their money and property in the purchase of said stock as aforesaid; whereas, in truth and in fact, as said defendants well knew, said advances in said selling price would be made by them, and by the officers, directors, and stockholders of said company, arbitrarily and without any regard to any corresponding increase in the real intrinsic value of said stock, and without any regard to any corresponding increase in the assets and profits of said company, and in truth and in fact, as said defendants well knew, said advances would not represent and could not be based upon or justified by any corresponding increase in the assets and profits of said company, but would be determined solely by the estimate of said defendants as to how far it would be practicable by means of such advances to gull said persons so intended to be defrauded; and whereas, in truth and in fact, as said defendants well knew, said advances in the selling price of said stock would not create a large surplus fund for said company, and all amounts paid for said stock, over and above the par value of ten dollars per share, would not be paid into the treasury of said company, and would not constitute a surplus fund of

said company, and it was a part of said scheme and artifice of said defendants that said advances in the selling price of said stock should be made for the purpose of enabling the said defendants to sell and dispose of their own personal holdings of said stock, and stock of said company under their control, at such advanced prices, and that all money and property received from the sales of such stock, so owned by said defendants, or under their control, should be received and retained by said defendants for their own use without any benefit whatever to said company or the stockholders; and for the purpose of enabling said defendants to receive large and additional commissions on all sales of treasury stock which should be made at such advanced prices.

And it is further a part of said scheme and artifice of said defendants to defraud said persons in and by the sale of said stock as aforesaid, which said defendants and said divers other persons to the grand jurors unknown so conspired to devise and execute, falsely and fraudulently to represent to said persons, that each and all of the officers and directors of said Northwestern Trustee Company had invested large sums of their own money in said company, and were, each and all, the owners and holders of large amounts of the stock of said company, and that a large number of well known and prominent financial, business and professional men, residing in the State of Montana, had invested large sums of their own money in said company and were the owners and holders of large amounts of the stock



of said company, and that each of the directors of said company, and all of them, had no interest in the method of operation of said company except in securing dividends as holders of its stock; whereas, in truth and in fact, as said defendants well knew, none of the officers or directors of said company had invested large amounts of their own money in the stock of said company, but, on the contrary, that large amounts of said stock had been issued by said company to said officers and directors without said officers and directors having paid any money or other valuable consideration whatever therefor; and whereas, in truth and in fact, as said defendants well knew, neither a large number of well known or prominent financial, business or professional men residing in the state of Montana, had invested large sums of their own money in said stock, nor were they the owners and holders of large amounts of the stock of said company, but on the contrary, as said defendants well knew, a large number of the shares of stock of said company owned and held by prominent and well known financial, business and professional men residing in the state of Montana, had been given to said well known and prominent financial, business and professional men by the officers, directors and promoters of said Northwestern Trustee Company, without any consideration whatever being paid for the same, for the sole purpose of enabling the officers, directors, promoters and sales agents of said company to falsely and fraudulently represent and pretend to said persons so



intended to be defrauded as aforesaid, that said well known and prominent financial, business and professional men were financially interested in said company and the holders and owners of the stock thereof; and whereas, in truth and in fact, as said defendants well knew, the only interest a large number of the directors of said company had in the operation of said company was in the amount of profits and commissions such directors could receive from the sales of the stock of said company.

And it was further a part of said scheme and artifice, which said defendants and said divers other persons to the grand jurors unknown, so conspired to devise and execute, to induce said persons, so intended to be defrauded, to purchase said stock as aforesaid, to falsely and fraudulently represent to said persons, that each year the said company had been in business it had earned a profit; that said company was making money; that it was earning a substantial net profit from its business operations and was firmly established on a profit earning basis; whereas, in truth and in fact, as said defendants well knew, each and all of said representations would be false and fraudulent, and whereas, in truth and in fact, as said defendants well knew, the said company had never at any time, while the said company had been in business, earned a profit, and had never at any time made any money, and was not then earning a profit from its business operations, and was not established on a profit earning basis.

And it was further a part of said scheme and

artifice, which said defendants and said divers other persons to the grand jurors unknown, so conspired to devise and execute, to cause said Northwestern Trustee Company to issue, from time to time, what would purport to be statements of its financial condition, and said defendants intended to communicate said statements, which they should so cause to be issued to said persons so intended to be defrauded, for the purpose of inducing said persons so intended to be defrauded to purchase said stock as aforesaid; and said defendants, as part of said scheme and artifice, intended by means of such statements, falsely and fraudulently to represent to, and to induce said persons so intended to be defrauded, to believe that said statements fully and fairly represented the financial condition of said company, and that said company had on hand, at the time of the issuance of such statements, actual assets exceeding in value the par value of all capital stock of said company issued or subscribed for at the time of the issuance of such statements, and that there was a surplus in the treasury of said company available for dividends; whereas, in truth and in fact, said defendants well knew that at the time said defendants intended said statements would be issued as aforesaid, the actual value of the assets of said company would not then and there exceed or be equal in value to the par value of all, the capital stock issued or subscribed for at the time of the issuance of such statements, and in truth and in fact, the said defendants well knew that a large amount of the as-

sets of said company, as shown in such statements, would then and there be of little or no value, and that the value of said assets as shown in such statements would be arbitrarily fixed and determined by the officers and directors of said company without regard to the true value thereof, and that there would be no surplus in the treasury of said company available for dividends; and whereas, in truth and in fact, as said defendants well knew, such statements would not then and there fully and fairly state and show the actual financial condition of said company, but would then and there be calculated to conceal from said persons, so intended to be defrauded, the true financial condition of said company, and in particular the fact that said company was carrying on and conducting its business at a loss.

And it was further a part of said scheme and artifice, which said defendants and said divers other persons to the grand jurors unknown, so conspired to devise and execute, to defraud said persons in and by the sale of said stock, as aforesaid, falsely and fraudulently to represent to said persons, so intended to be defrauded, that the capital stock and surplus of said Northwestern Trustee Company exceeded the sum of five hundred thousand dollars, intending by means of such representations to falsely and fraudulently represent to and induce said persons intended to be defrauded to believe that, at the time of the making of said false and fraudulent representations, the par value of the capital stock of said

company then subscribed for, together with the surplus fund of said company, exceeded the sum of five hundred thousand dollars; whereas, in truth and in fact, as said defendants well knew, the par value of the capital stock of said company then subscribed for did not exceed the sum of one hundred and fifty thousand dollars, and that there was no surplus whatever in the treasury of said company.

And it was further a part of said scheme and artifice, which said defendants and divers other persons to the grand jurors unknown, so conspired to devise and execute, to defraud said persons in and by the sale of said stock as aforesaid, to induce said persons so intended to be defrauded, to purchase said stock as aforesaid, by falsely and fraudulently representing to said persons, so intended to be defrauded, that said company would make loans to the persons purchasing said stock on their property, both real and personal; that said company intended to and would appoint loan boards, consisting of stockholders of said company, in each community in the state of Montana, to pass on all applications for loans made to said company; and had then appointed such loan boards in a large number of communities in the state of Montana, to wit, more than one hundred such communities; and that if such persons would purchase said stock such purchasers would be appointed members of such loan boards in the communities in which said purchasers respectively resided; whereas, in truth and in fact, as said defendants well knew, said company would not make



loans to the persons purchasing said stock on their real and personal property; and said company would not appoint loan boards, consisting of stockholders of said company, in each community in the state of Montana; and said company had not appointed such loan boards in more than ten communities of the state of Montana; and that said company would not appoint persons purchasing said stock as members of said loan boards in the communities in which said purchasers resided.

And to effect the object of said conspiracy, the said A. M. Alderson, on June 2nd, 1914, in the state and district of Montana, and within the jurisdiction of this court, deposited and caused to be deposited in the post office of the United States at Great Falls, Montana, a certain sealed letter, with the postage fully prepaid thereon, and addressed and directed to

Mr. John Simpson,  
Chinook, Montana,

and which said letter was in the words and figures following, to wit:

“NORTHWESTERN TRUSTEE COMPANY

Incorporated

Authorized Capital Stock and Surplus .

\$500,000.00

Bonds and Investment Securities

Farm Mortgage Loans

SIDEBOTHAM & WILMOT

Sole Fiscal Agents

General Offices, Tod Bldg.



Great Falls, Montana.

June 1, 1914.

**“TO THE STOCKHOLDER OR SUBSCRIBER  
ADDRESSED:**

“The Company is making much progress. The Fiscal Agents’ Department has brought into the Company over 75 new stockholders in the last 30 to 40 days, and at no time in the history of the institution has our business looked more promising.

The Funds of the Company are being loaned solely on first mortgages as fast as they are paid in, and under our system of loaning it is necessary that 5 stockholders in the community where the loan is granted shall send us a written appraisal of the value of the property, and no loans shall be granted for more than 40% of a saleable valuation of said property.

“The Company is now operating its business at a very economical cost. None of the officers or directors are under salary and the only fixed charge is that of our bookkeeper and stenographer, which is \$100.00 per month, and office rent, which now amounts to \$15.00 per month.

“Your earnest co-operation is respectfully solicited in assisting us and the Fiscal Agents in the sale of stock and in making collections due us from subscribers. There are now over 450 stockholders and subscribers and we are in position to make loans.

“Enclosed you will find a card which we are desirous of having you fill out, if you have not already done so, which will give us complete information as

to your address and occupation. A great many of the stockholders have written us complimentary letters as to their views of the Company and these letters are of much benefit to the institution.

“Thanking you again for your earnest co-operation, we are,

“Yours very truly,

“NORTHWESTERN TRUSTEE COMPANY,

“Per A. M. Alderson,

President.”

“C”

And further to effect the object of said conspiracy, the said J. W. Speer, on February 26th, 1915, in the state and district of Montana, and within the jurisdiction of this court, deposited and caused to be deposited in the post office of the United States at Great Falls, Montana, a certain sealed letter, with the postage prepaid thereon, addressed and directed to

Mr. J. A. Ebaugh,

Box 565,

Malta, Montana.

and which said letter was in the words and figures following, to wit:

“J. W. Speer

Attorney at Law

First National Bank Building

Great Falls, Montana.

February 26, 1915.

“Mr. J. A. Ebaugh,

Box 565, Malta, Montana.

“Dear Sir:

“Replying to your letter of February 23rd relative to the Northwestern Trustee Company, will say that I have paid for my stock in full in that company, and have no particular kick coming at this time. There was a time when I did think things were not right and in fact knew they were not. A lot of options and contracts have been granted and selling agents were getting all the money and the stockholders practically getting nothing. This matter has all been remedied however, and all options and contracts have been cancelled and the Fiscal Agents have been required to return to the company all moneys received on account of any options granted, except the regular commission. The Company is now in good shape and I am perfectly satisfied with the conditions as they now exist.

“As to any representations which might have been made to you by the agent, I might say that this would have no effect upon the company as at the time you bought your stock, you signed a contract and in that contract were embodied the words that no representations made by any agent of the company other than those embraced in this contract would be binding on the company. This bars you from making any objections to the company direct. I do not know what representations might have been made to you, and for that reason am not in a position to advise.

“I had a long talk with Mr. Newman and he will write you.

“Yours very truly,  
“J. W. *S*peer.”  
“S”

“JWS-HS”

And further to effect the object of said conspiracy, the said W. C. Rae, on June 18, 1915, in the state and district of Montana, and within the jurisdiction of this court, deposited and caused to be deposited in the post office of the United States, at Great Falls, Montana, a certain sealed letter, with the postage fully prepaid thereon, addressed and directed to

Mr. J. P. Leib,  
Pony, Montana,

and which said letter was in the words and figures following to wit:

“NORTHWESTERN TRUSTEE COMPANY  
(Incorporated)

Authorized Capital Stock and Surplus Over  
\$500,000.00

Home Office

Great Falls, Montana

Branch Offices in Principal Cities and Towns in  
Montana.

Bond, Mortgage and Investment Securities.

“Hon. A. M. Alderson, President  
Robt. R. Sidebotham, Vice-President  
D. G. Bertoglio, Vice-President  
W. R. Allen, Vice President  
J. W. Speer, Vice-President.  
Wm. C. Rae, Secretary & Treasury

“J. G. G. Wilmot, Chairman  
J. Henry Evers, Director  
B. W. Porter, Director  
W. A. Patterson, Director  
L. W. GIBSON, Director.  
Henry A. Meyer, Director  
Albert G. Karcher, Director.

Great Falls, Montana, June 15, 1915.

Mr. J. P. Leib,

Pony, Montana.

Dear Sir:

“On account of the large demand for loans and the many applications on file in this office from our stockholders and others who have a high grade of security to offer, our Board of Directors have authorized a discount of  $2\frac{1}{2}\%$  on all notes held by the Company. Thinking that you might wish to take advantage of this discount, we are writing you this letter before taking the matter up with the banks. We believe that if these notes are paid and the money loaned out on first mortgage, it would earn us much more than just the interest that is accruing on the notes.

“Our Company is progressing rapidly and has moved into its new banking Rooms in the Ford Building which were especially planned and fitted up for our work. You are cordially invited to visit us and become familiar with the business we are doing.

“Thanking you for an early response as to whet-



her or not you wish to take up your notes at this time, we are,

“Very truly yours,

“Wm. C. Rae,

Sec. & Treas.

“The discount allowed on your note would amount to \$7.50 besides stopping interest.”

And further to effect the object of said conspiracy, the said J. G. G. Wilmot, on June 29th, 1915, in the state and district of Montana, and within the jurisdiction of this court, deposited, and caused to be deposited, in the post office of the United States at Great Falls, Montana, a certain sealed letter, with the postage fully prepaid thereon, addressed and directed to

Mr. ~~P~~ohn W. Janssen,,  
Coalwood, Montana,

and which said letter was in the words and figures following, to-wit:

“NORTHWESTERN TRUSTEE COMPANY  
(Incorporated)

Authorized Capital Stock and Surplus Over  
\$500,000.00

Home Office

Great Falls, Montana.

Branch Offices in Principal Cities and Towns in  
Montana.

Bond, Mortgage and Investment Securities

“Hon. A. M. Alderson, President

Robt. R. Sidebotham, Vice-President

D. G. Bertoglio, Vice-President

W. R. Allen, Vice President

J. W. Speer, Vice-President.

Wm. C. Rae, Secretary & Treasury

“J. G. G. Wilmot, Chairman

J. Henry Evers, Director

B. W. Porter, Director

W. A. Patterson, Director

L. W. Gibson, Director

Henry A. Meyer, Director

Albert G. Karcher, Director.

“Sidebotham & Wilmot

Sole Fiscal Agents

Great Falls, Montana,

June 29, 1915.

“Mr. John W. Jannsen,

Coalwood, Montana.

“Dear Sir:

“Your valued favor of the 11th inst. received and before replying to same, I have taken the matter up with our Mr. Clausen relative to the statement you make that he has sold your notes. I am informed such is not the case, as he has not parted with them, nor has the Company, although this is entirely regular and permissable. The Company is anxious to cash all its notes as early as possible, so as to place the money in mortgages on lands throughout the State, as we have more demands for loans than we can supply.

“I fail to understand why you wish your notes returned, as the stock is being bought by the very best

people throughout the State. 126 of them residing in Great Falls where the home office is located. This should speak to you very strongly in itself. It is to be expected that when a man signs a contract and notes, whether it be for stock or anything else, he knows what he is doing, and if he afterward states that he has changed his mind, does not in any way relieve him of the responsibility incurred.

“You are associating yourself with something like 800 other good Montana people to build a large Mortgage Loan Institution, one that we are all proud of and one that we expect will be one of the best and largest financial institutions in the West. You understand a Mortgage Loan Company takes no chances on its investments, dealing exclusively in first mortgage loans on land and property never exceeding 50% of a conservative value of the property.

“When such men as Ex-U. S. Senator Paris Gibson and Ex-Governor E. L. Norris and hundreds of other high grade men are stockholders in an institution, it is a very safe thing for you or anyone else to have as large an investment in as you can conveniently handle.

“J.W.J.—2.

“We do not return notes or contracts to anyone under any condition and we make no exception in your case.

“You have used good judgment in selecting this Company for an investment and I advise you to go through with your payments you have contracted

for, as I believe you will be greatly pleased by your forethought in the near future.

“Thanking you for writing us and assuring you we will be pleased to keep you fully advised as to the progress of the Company.

“I am

Yours very truly

“J. G. G. Wilmot,

“Chairman Executive Committee

“Northwestern Trustee Company.”

“JGGW/JH”

And further to effect the object of said conspiracy, the said R. R. Sidebotham, on November 13th, 1915, in the state and district of Montana, and within the jurisdiction of this court, deposited, and caused to be deposited in the post office of the United States at Great Falls, Montana, a certain sealed letter, with the postage fully prepaid thereon, addressed and directed to

Mrs. Jane E. Beyerlein,

Stearns, Montana.,

and which said letter was in the words and figures following, to wit:

“NORTHWESTERN TRUSTEE COMPANY

(Incorporated)

Authorized Capital Stock and Surplus Over

\$500,000.00

Home Office

Great Falls, Montana.

Branch Offices in Principal Cities and Towns in  
Montana.

Bond, Mortgage and Investment Securities.

“Hon. A. M. Alderson, President  
Robt. R. Sidebotham, Vice-President  
Wm. C. Rae, Secretary & Treasurer.  
M. A. Cort, Asst. Sec. & Treas.

“J. W. Speer, Director  
A. M. Alderson, Director.  
J. G. G. Wilmot, Director  
W. R. Allen, Director  
Wm. C. Rae, Director  
Robt. R. Sidebotham, Director.  
D. G. Bertoglio, Director.

“Sidebotham & Wilmot,  
Sole Fiscal Agents

“Great Falls, Montana.

“November 13, 1915.

“Mrs. Jane E. Beyerlein,  
Stearns, Montana.

“Dear Madam:

“The writer has been away from Great Falls practically ever since you were here until a few days ago. I am much surprised to learn that you have not sent in the abstract and papers pertaining to the loan on your land as was discussed fully at the time you were here.

“The following is due from you at the present time:

Principal on note.....	\$ 70.00
Interest on note to date.....	12.00
Filing suit .....	5.00



Sheriff fees .....	15.00
Attorney fees .....	30.00
	<hr/>
	\$132.00

“You will remember, Mrs. Beyerlein, when you were here we said if you settled this matter up at once, it would be possible to reduce the costs, but to our dissatisfaction you did not do so. The matter is now to a point where the Attorney can take judgment against you for the full amount with costs and additional cost to those set forth.

“In all fairness to you the writer has taken the liberty to write you this letter to see if the same cannot be settled without our taking judgment and forcing the sale of your property. In a case of this size it is hardly worth while as the procedure of the courts is always so expensive, but unless we receive a check from you within the next few days, it will be necessary for our Attorney Mr. Church to take judgment.

“Hoping that you will be able to take care of this matter so that further legal proceedings will not be necessary, we are

“Very truly yours,

“Robt. R. Sidebotham.

“P. S. If you still desire the loan we will be glad to make it, but we must know your decision at once.”

And further to effect the object of said conspiracy, the said M. A. Cort, on April 17th, 1916, in the state and district of Montana, and within the juris-

diction of this court, deposited and caused to be deposited in the post office of the United States at Great Falls, Montana, a certain sealed letter, with the postage fully prepaid thereon, addressed and directed to

Mr. Geo. W. Mulry,  
Chicago, Ill.

Millers Mutual Casualty Ins. Co.,  
and which said letter was in the words and figures following, to wit:

“NORTHWESTERN TRUSTEE COMPANY  
(Incorporated)

Home Office

Great Falls, Montana.

Bond, Mortgage and Investment Securities.

“Hon. A. M. Alderson, President  
Robt. R. Sidebotham, Vice-President  
Wm. C. Rae, Secretary & Treasurer.  
M. A. Cort, Asst. Sec. & Treas.

“J. W. Speer Director.

A. M. Alderson, Director  
J. G. G. Wilmot, Director  
W. R. Allen, Director  
Wm. C. Rae, Director  
Robt. R. Sidebotham,  
D. G. Bertoglio, Director.

“Great Falls, Montana,

“April 17, 1916.

“Mr. Geo. W. Mulry,  
Millers Mutual Casualty Ins. Co.,  
Chicago, Ill.

“Dear Sir:

“We have your letter of April 14th. The owner of your note *at this time* is this Company. The note will be sent to any bank you designate with your stock certificate, and the same will be delivered to you upon payment of the amount due. Who had your note before we got it is something which we are not interested in.

“We note in your letter that it will be necessary for us to give you certain information before your note will be paid. Any information you get from this office you are welcome to, and you have had all you are going to get. Now, if you understand English, I trust that you will understand that it is useless to try to pump this office.

“Yours truly,

“NORTHWESTERN TRUSTEE CO.,

“Per M. A. Cort,

“Asst. Treas.”;

contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

(Signed) Burton K. Wheeler,

United States Attorney,

District of Montana.

Endorsed.

No.....

UNITED STATES DISTRICT COURT

DISTRICT OF MONTANA

UNITED STATES OF AMERICA,

V.

A. M. Alderson, et al.

INDICTMENT

A True Bill,

W. J. ~~Mary~~ Haffie,

Foreman of Grand Jury

BURTON K. WHEELER,

United States Attorney,

District of Montana.

WITNESSES—

Alice M. Descelles

Maud E. Burg

S. Durand

H. C. Walker

J. A. Urbanowicz

John Simpson

J. P. Leib

John W. Janssen

Jane E. Beyerlein

Geo. W. Mulry

J. A. Ebaugh

B. F. Johnson

Jacob Bauer

J. A. Best

O. S. Worden

Edmund J. Donnelly

H. T. Parker

A. H. Davis  
Robt. H. Atkinson  
Philip N. Bean  
W. F. Watt  
William Cluston  
H. N. Black  
David H. Wetenburg  
E. J. Alt  
Emil A. Anderson  
W. H. Auclare  
Clyde Carey  
John W. Coburn  
Wallace D. Coburn  
S. G. Swigart  
H. H. Crittenden  
Gus Descelles  
Dauritz Dreyer  
Peter C. Dreyer  
John B. Eyre  
H. C. Gadoury  
H. L. Harris  
B. S. Hollopeter  
N. Robt. Holt  
Thos. Johnston, Sr.  
H. C. Kerr  
Charles Foreman  
C. A. Miller  
E. A. Smith  
H. Norskag  
Donald Arthur  
J. E. Murray



John Belier  
Etta Thomas  
S. E. Tucker  
Mary Jewett  
T. O. Marken  
O. D. Kicher  
Charles F. Fanning  
W. C. McVey  
A. E. Millard  
J. A. Underwood  
James Sorenson  
Arthur J. Soule  
Guy Thompson  
Thos. Hennich  
S. S. Tripp  
B. J. Boorman  
John F. Davis  
Louis Hoven  
J. R. Grogan  
E. H. Cooney  
E. H. Dalby  
Edwin L. Norris  
Albert A. Paisley  
R. M. Huston  
Chas. Riddiford  
A. S. Hulden  
F. E. McConaboy  
W. M. Duncan  
W. H. Rausaw  
Ralph P. Reed  
Geo. E. Hurd

Walter E. Tynes  
E. T. Broadwater  
D. R. Edwards  
Ellis Rodden

PRESENTED BY THE GRAND JURY  
IN OPEN COURT, BY THEIR FOREMAN, IN  
THEIR PRESENCE, AND FILED THIS 30  
DAY OF JUNE, A. D. 1916.

GEO. W. SPROULE,  
Clerk.

By C. R. GARLOW,  
Deputy.

That thereafter and on the 1st day of July, 1916,  
defendant, R. R. Sidebotham was duly arraigned  
and pleaded not guilty the minute entry thereof be-  
ing in words and figures as follows, to-wit:

(TITLE OF COURT AND CAUSE)

At this time A. M. Alderson, W. C. Rae, R. R.  
Sidebotham and M. A. Cort, were present in court  
and being arraigned, they answered that their true  
names are, respectively, A. M. Alderson, W. C. Rae,  
R. R. Sidebotham and M. A. Cort. Thereupon Al-  
bert J. Galen, Esq., asked that the names of O. W.  
McConnell, Esq., and Messrs. Galen & Mettler be en-  
tered herein as attorneys for defendants A. M.  
Alderson, W. C. Rae and M. A. Cort, and it was so  
ordered. Thereupon O. W. McConnell, Esq., asked  
that his name be entered herein as attorney for R.  
R. Sidebotham, and it was so ordered. Thereupon  
defendants waived the reading of the indictment;  
and thereupon each of said defendants A. M. Alder-

son, W. C. Rae, R. R. Sidebotham and M. A. Cort, pleaded not guilty and plea of not guilty as to each was duly entered. Thereupon, on motion of counsel for said defendants it was ordered that said defendants may have 6 days from this date within which they may withdraw their pleas of not guilty and demur or otherwise plead to the indictment herein, if so desired.

GEO. W. SPROULE,  
Clerk.

That thereafter and on the 5th day of July, 1916, defendant J. G. G. Wilmot was duly arraigned and pleaded not guilty, the minute entry thereof being in words and figures as follows, to-wit:

(TITLE OF COURT AND CAUSE)

Defendants D. G. Bertoglio and J. G. G. Wilmot present in court and being arraigned they answered that their true names are, respectively, D. G. Bertoglio and J. G. G. Wilmot. Whereupon E. M. Lamb, Esq., asked that his name be entered herein as attorney for said defendant D. G. Bertoglio, and it was so ordered. Thereupon defendant J. G. G. Wilmot stated to the court that his attorney is Ex-Governor Hawley of Idaho. Thereupon reading of indictment was waived by said defendants, and thereupon each of said defendants D. G. Bertoglio and J. G. G. Wilmot pleaded that he is not guilty and plea of not guilty entered as to each with the understanding that defendants may have until Monday, July 10, 1916, within which to withdraw their said pleas and demur or otherwise plead to the in-

dictment herein, if so desired . Thereupon Mr. Lamb asked that defendant D. G. Bertoglio be granted a separate trial herein, and the U. S. Attorney objecting thereto, the motion was submitted to the court and taken under advisement and thereafter denied.

GEO. W. SPROULE,  
Clerk.

That thereafter and on the 30th day of December, 1916, the defendants R. R. Sidebotham and J. G. G. Wilmot filed their petition and motion for change of place of trial in words and figures as follows:

(TITLE OF COURT AND CAUSE)

The petition of R. R. Sidebotham and J. G. G. Wilmot respectfully shows to the Court:

1.

That they are two of the above-named defendants.

2.

That the indictment herein was found by the grand jury on April ....., 1916; that at that time a presidential and a state political campaign were approaching and as the summer wore on public feeling ran very high; that on August 29, 1916, Sam V. Stewart was nominated for the office of governor of Montana by the democratic party and Frank J. Edwards was nominated for said office by the republicans; that said latter candidate lives and for many years past has lived in Helena, where this case is now pending; that the above-named A. M. Alderson was and he still is a democrat in politics, holding the office of Secretary of State, and the said

W. C. Rae is State Treasurer and also a democrat; that both of said defendants were elected to said offices on 1912 on the democratic ticket, on which said Sam V. Stewart also ran for the office of governor and was elected; that from August 29, 1916, to Nov. 7, 1916, a most active, thorough and violent campaign was waged throughout Montana for said office of governor and said campaign was particularly active and personal in the County of Lewis and Clark on account of the fact that Edwards lived in said county and had been several times mayor of the city of Helena; that fierce attacks were made on the official record of said Edwards by the Helena Independent newspaper, and especially strong and virulent criticisms were made upon the record as governor, of said Stewart, and the State democratic administration of which Alderson and Rae were members, by the Montana Record-Herald, a daily and weekly republican newspaper published in Helena; that Stewart, Alderson and Rae were criticized by said latter newspaper on account of their connection with the Northwestern Trustee Company and particularly Alderson and Rae on account of their official connection therewith; that the matter was treated repeatedly in said newspaper in a partisan way, the case was apparently prejudged and every effort was made by said paper by innuendo, to create the impression and convey the idea that they were both guilty of the crime charged in the indictment herein; that said newspaper has and had a large circulation,



particularly in Lewis and Clark, Jefferson, Powell and Broadwater counties, which latter three are all contiguous to the first, and, as affiants are informed and believe, a free copy of said newspaper was sent for several days during the latter part of the campaign to every registered voter in each of said counties; that said paper is and was the recognized organ and mouthpiece of the republican party in each of said counties, and has a large influence, and in consequence thereof the guilt or innocence of the defendants in this action of the crime charged against them herein became an issue in said campaign, the affirmative of which, not directly, but by inference and innuendo, was vehemently maintained by said Montana Record-Herald, the impression conveyed by its local, special and editorial items being that the democratic party, having elected Alderson and Rae to office, was responsible for their alleged criminal conduct in connection with the Northwestern Trustee Company, and that Stewart, as the leader of the democrats in Montana, was responsible for allowing them to use their official positions for their personal gain through the medium of their connection with the Northwestern Trustee Company. That three of said newspaper articles or clippings are, as these affiants are informed and believe, attached to the affidavit of J. W. Spear, one of the defendants herein, as a part of his petition for a change of the place of trial of this action, and many others of like tenor appeared in said paper during the course of said campaign. That in consequence of the issue

so raised, the public mind became influenced and inflamed with partisan political prejudice and hatred, the affairs of the Northwestern Trustee Company, the connection of the defendants, herein with said company, the fact of their indictment, and the responsibility of the democratic party for the acts of two of its State officers, were freely, vehemently, and continually discussed during said campaign, on the streets and other places where people congregate, on the platform, and in the public press; and these affiants allege, on information and belief, that said Helena Record-Herald, the leaders of the republican party, its speakers and members generally, sought to create the impression and did create the impression and belief generally among the rank and file of the party that all of the above-named defendants were, either actually or morally, guilty of the crime charged in the indictment herein; that although these affiants were not mentioned personally in connection with said newspapers articles, speeches etc., the crime charged against the defendants, involving a conspiracy, is of such a nature that a declaration or belief that one of the defendants is guilty necessarily involves all the others. That the city of Great Falls, in Cascade County, has two large daily newspapers which circulate largely in said Cascade County and other nearby counties and the said Montana Record-Herald, as affiants believe, has and had a comparatively small circulation in that community and did not inflame and prejudice the minds of the people there as it did

in Helena and vicinity. That the electors of said four counties are very equally divided in politics between said two political parties and therefore, as these affiants believe, they cannot have a fair and impartial trial in Lewis and Clark County on account of the fact that the beliefs and prejudices created during said political campaign still remain in the minds of jurors who affiliated with the republican party and many other persons.

Wherefore your petitioners pray that this Honorable Court may transfer said cause to Cascade County for trial.

ROBERT R. SIDEBOTHAM,  
J. G. G. WILMOT,

By HENRY C. SMITH,  
his Attorney.

Petitioners and defendants.

(Duly verified by Robt R. Sidebotham)

(Filed Dec. 30th, 1916).

(TITLE OF COURT AND CAUSE.)

Come now the above-named defendants R. R. Sidebotham and J. G. G. Wilmot, and move the Court to change the place of trial of this action from Helena to Great Falls, for the following reasons, to-wit:

1. Because the indictment shows on its face that the alleged crimes were accomplished and committed, if at all, at the post-office of Great Falls, Cascade County, Montana.

2. On account of the fact that a fair and impartial trial cannot be had at Helena on account of

the bias and prejudice of the people of Lewis and Clark County, Powell, Jefferson and Broadwater Counties, from which a jury will be drawn, as shown by the affidavits of your petitioners herewith filed.

And petitioners will ever pray.

ROBERT R. SIDEBOTHAM,  
J. G. G. WILMOT,

Petitioners.

HENRY C. SMITH,

Attorney for Petitioners.

Service of the foregoing motion and affidavits acknowledged and copies thereof received this 30th day of December, 1916.

B. K. WHEELER,  
United States Attorney,  
District of Montana.

Filed Dec. 30, 1916.

That thereafter said motion was by the Court denied by a minute entry of January 9th, 1917, as follows:

(TITLE OF COURT AND CAUSE.)

At this time Henry C. Smith, Esq., attorney for defendants R. R. Sidebotham and J. G. G. Wilmot, presented to the court the motion of said defendants to change the place of trial hereof from Helena to Great Falls, Montana, H. G. Murphy, Esq., Assistant U. S. Attorney, being present and appearing on behalf of the U. S.

Thereupon said motion was submitted to the court without argument; and thereupon, after due con-



sideration, it was ordered that said motion be and the same hereby is denied.

GEO W. SPROULE, Clerk.

By C. R. GARLOW, Deputy.

That thereafter and on the 23rd day of Jan. 1917, these defendants filed their motions for a directed verdict herein as follows:

(TITLE OF COURT AND CAUSE.)

Comes now the defendant J. G. G. Wilmot, and moves the Court to direct the jury in the above entitled cause to find a verdict of not guilty as to him, upon the following counts of the indictment, and each and every of them severally, to wit:

Count No. 1, Count No. 2, Count No. 3, Count No. 4, Count No. 5, Count No. 6, Count No. 7, Count No. 8, Count No. 9, Count No. 10, and Count No. 11;

Upon the grounds and for the reasons as to each of them severally.

1. That the government has failed to prove a case against said defendant sufficient to go to the jury.

2. That the evidence presented is not sufficient to show the commission by said defendant of the offense charged by said count of the indictment.

3. That the evidence presented is not sufficient to show the commission of a public offense by said defendant.

HENRY C. SMITH,

Atty. for said deft.

(Filed January 23, 1917.)



(TITLE OF COURT AND CAUSE.)

Comes now the defendant R. R. Sidebotham, and moves the Court to direct the jury in the above entitled cause to find a verdict of not guilty as to him, upon the following counts of the indictment, and each and every of them, severally, to-wit:

Count No. 1, Count No. 2, Count No. 3, Count No. 4, Count No. 5, Count No. 6, Count No. 7, Count No. 8, Count No. 9, Count No. 10, and Count No. 11.

Upon the grounds and for the reasons as to each of them severally,

1. That the government has failed to prove a case against said defendant sufficient to go to the jury.

2. That the evidence presented is not sufficient to show the commission by said defendant of the offense charged by said count of the indictment.

3. That the evidence presented is not sufficient to show the commission of a public offense by said defendant.

HENRY C. SMITH,

Atty. for said Deft.

Filed January 23, 1917.

That thereafter the following minute entry was made with respect to said motions, to-wit:

(TITLE OF COURT AND CAUSE.)

Defendants and respective counsel present as before, and trial of cause resumed; and thereupon John Bleier was sworn and examined as a witness for the U. S. certain documentary evidence introduced. Whereupon the U. S. rested. Thereupon defendants Alderson, Rae, Bertoglio, White, Speer,

Sidebotham, Wilmot, Cort and Rainwater each filed written motion for directed verdict, and the defendant Tobin considered to have made a similar motion, whereupon said motions were duly argued by counsel and submitted to the court. Thereupon, after due consideration the court ordered, that the motion of defendants White and Tobin be granted, that the motions of defendants Alderson, Rae and Speer be granted as to counts 1 and 2, and denied as to the other counts of the indictment, that the motion of defendants Wilmot, Sidebotham and Cort be denied and that the motion of defendant Bertoglio be granted as to the first count of the indictment and denied as to the other counts. Exceptions noted. Thereupon court announced decision on the motion of defendant Rainwater would be reserved until tomorrow morning at 10 o'clock. Thereupon, by consent of all parties court ordered that counts 5 and 10 of the indictment herein be and hereby are dismissed for lack of proof. Thereupon further trial of cause was ordered continued until tomorrow morning at 10 o'clock.

GEO. W. SPROULE, Clerk.

By C. R. GARLOW, Deputy.

IN THE DISTRICT COURT OF THE UNITED  
STATES, IN AND FOR THE DISTRICT  
OF MONANA.

---

THE UNITED STATES OF AMERICA,

*Plaintiff,*

vs.

A. M. ALDERSON, W. C. RAE, R. R. SIDEBOTHAM, J. G. G. WILMOT, J. W. SPEER, D. G. BERTOGLIO, H. A. MEYER, J. A. SAMPSON, M. A. CORT, C. A. RAINWATER, C. W. TOBIN, W. W. WHITE, E. C. WILLS, J. J. IVES and L. D. CLAUSEN,

*Defendants.*

Be it remembered that on the 10th day of January, 1917, the above entitled action came on for trial in the above entitled court, and the following proceedings were had and done:

A jury was duly and regularly empanelled and sworn to try the cause, B. K. Wheeler, United States Attorney, Homer G. Murphy, and James H. Baldwin, Assistant United States Attorneys, appearing for the United States of America, and D. M. Kelley and Albert J. Galen, appearing for the defendants A. M. Alderson and W. C. Rae, Henry C. Smith, appearing for the defendants, R. R. Sidebotham, J. G. G. Wilmot, M. A. Cort and C. A. Rainwater, L. L. Gallaway, J. A. McDonough, Stephen Cowley, J. Kaufman appearing as counsel for the defendant J. W. Speer, Edward Lamb appearing for the defendant D. G. Bertoglio, A. H.

McConnell appearing for the defendant W. W. White, and C. W. Tobin appearing in person.

Whereupon Louis A. Haven, a witness called and sworn on behalf of the Government, testified as follows:

**DIRECT EXAMINATION BY MR. WHEELER:**

My name is Louis A. Haven. I am practicing law in Butte, Montana. Am acquainted with Mr. R. R. Sidebotham and J. G. G. Wilmot and A. M. Alderson. I was residing in Butte and was a member of the Board of Directors of the Northwestern Trustee Company at one time. I was on the Board, I believe, from April, 1913, until about August of the same year.

In April, 1913, I was associated with John F. Davies, in his law office, and one evening Sidebotham was in the office, and John F. Davies came to me with Sidebotham and told me he didn't have time to act as a director and officer of the company, and told Sidebotham that he thought I would act as director and officer in his place.

This book is the original minute book of the Board of Directors of the Northwestern Trustee Company. I am familiar with the signature of Robert Sidebotham. I wouldn't state positively. I would say it was his signature.

**MR. WHEELER:** We now offer in evidence the minutes of the Northwestern Trustee Company as contained in Plaintiff's Exhibit 1.

Admitted without objection, and which said Exhibit 1 plaintiff, was thereafter read to the court

and jury during the trial of each cause.

(Here insert Exhibit 1 plaintiff.)

The fourth meeting of the board of directors, held on May 24th, 1913, which would be the second meeting at which I was secretary, I find the following in the minutes: "A discussion was had as to the business of the company" — — —

Q. Just give me the date.

A. Well, it was not transferred at that time. The discussion was had, and the motion was made, seconded, and carried, that the president and secretary take what steps would be necessary to change it. As to the actual date of the change, I couldn't tell you without looking at the minutes. I find the following in the minutes.

(Here insert page 4 of Exhibit 1, Deft.)

Those present were Sidebotham, Blake, Risley, Edwards and Davis. The date of that agreement was January 2, 1913. At the time the stock was raised, it was the first meeting I attended as a director, or as secretary, and I don't recall anything being said as to why the price of the stock was raised, except the motion being made and carried.

I stayed in the company, I believe, until sometime in August of the same year. I don't know what the financial condition of the company was during the time I was with the company. I don't know whether or not it owned any property at all.

I don't recall any other options being granted at that meeting. In fact, what you refer to as an option there, I believe is just a direction by the board



of directors, authorizing Mr. Sidebotham to option ten thousand shares at ten dollars a share. I don't think any options were actually given at that particular meeting.

On May 24th, 1913, the fourth meeting of the board of directors of the Northwestern Trustee Company, on motion duly seconded and carried, J. M. Burlingame was unanimously chosen as a member of the board of directors, to succeed Mr. Risley, a member of the board of directors. I cannot state whether Mr. Burlingame at that time was a member of the board of directors or not; I understood he was.

At that time I accepted an option on 1,600 shares of the capital stock; there was twenty-five dollars paid over for the option. I never sold any stock under it. I transferred it to Sidebotham and Wilmot. I couldn't state positively the date, but I think it was transferred to Sidebotham and Wilmot in the spring of the following year, 1914. Sidebotham and Wilmot paid me something like sixteen hundred dollars, or sixteen hundred and fifty dollars, for transferring it.

Q. What have you to say as to whether or not you ever advertised any stock for sale under that option, or advertised any of the Northwestern Trustee Company's stock for sale?

MR. KELLY: We object to that, as to what this witness may have done concerning his option, as immaterial.

THE COURT: The objection will be overruled.

Exception noted.

A. I didn't say that I advertised any stock for sale under that option. I had fifteen shares issued to me at the time I became a director.

The fifteen shares were issued from the stock of Mr. Sidebotham. Those fifteen shares of stock were given me at the time I became a director. I did put an advertisement in the Great Falls Tribune offering stock of the Northwestern Trustee Company for sale at ten dollars and a half a share; that was I think in the fall of 1913. Two or three days after I put the advertisement in the paper, Mr. Wilmot and Mr. Alderson came into the office, and they talked over with me the advisability of withdrawing the advertisement. I don't recall the exact conversation, but the substance of it was that I would not be able to make any sales, and that it wouldn't do anybody any good, and nobody would make any money by the transaction. I couldn't state whether the stock was selling for fifteen or twenty dollars a share, but I believe that the minutes would show. They had a meeting of the stockholders, I believe in August in 1913, relative to raising the price from fifteen to twenty dollars. I don't know whether it was done or not. I was not present at that meeting. They came to the office, and that was the substance of the conversation, as I have stated. It was after that meeting that my optioned stock was taken over by Sidebotham and Wilmot. I couldn't state exactly how long after that, but I would say about six months. There was a change granted in the

option, giving me additional time. The change granted July 5, 1913, was allowing me to sell the stock.

Thereupon the minutes of the stockholders' meeting of January 8, 1913, were read, as found on pages 25 to 27, of Exhibit 1; also meeting of directors of January 11, 1913, found on pages 28, 29 and 30, to 36, inclusive, of said Exhibit; also meeting of directors of April 8, 1913, found on pages 37 to 39, inclusive; also directors' meeting of May 24, 1913, pages 40 to 47; also meeting of directors June 14, 1913, found on page 48; also directors' meeting of July 5th, and July 9th, 1913, found on pages 49 to 66, inclusive.

I was present in the forenoon, in that meeting of July 5th. I was at a meeting which adjourned until two o'clock, I believe, and I was present in the afternoon; and I notice in the minutes that it shows I was present at the meeting held at nine o'clock, I believe it was; that is evidently a misprint, because Mr. Meyers acted as secretary pro tem. I was not present at the night session; I was in the forenoon, and afternoon.

At the meeting in the forenoon I don't think the question of raising the stock to twenty dollars per share was discussed. It is not a fact that the raising of the stock from fifteen to twenty dollars per share was discussed prior to the time that the option granted to Bertoglio was given. Not at that meeting, I don't recall anything being said about the price being raised to twenty dollars. At the time

that this second contract was entered into, between Sidebotham and the company, there was a discussion, when there was only three members of the board, Sidebotham, Meyer and myself, as to whether or not Sidebotham, under the old contract, should receive a commission on the optioned stock, and he made a request, Sidebotham did, for, I think it was twenty per cent of the amount due under the contract to be paid for stock, and as I said, we took the position that he was not entitled to a commission on the optioned stock, for this reason, that it was the company that had sold this optioned stock, and he had sat on the board of directors and consented to these options being given, and really took no part in the sale of that stock under the option, and for that reason we didn't think under the contract he was entitled to any commission. He seemed to think he was. It was settled in this way: We refused to take any action until they had a full board of five members, and we told him at that time, as long as it was a Great Falls company, if these two Great Falls directors who were elected in the afternoon, I believe it was of July 5th, 1913, if they saw fit to grant him twenty per cent commission on the stock, and grant him a new contract, why, they should have a voice. That is what they did, signed this new contract.

Mr. Sidebotham contended that under the old contract that he had, he was entitled to twenty per cent on all the optioned stock, including the option to himself and the option to myself; and in that connec-



tion I would like to explain Mr. Sidebatham's position a little bit further. He did claim, in all fairness to him—but I didn't consider that—as long as he was doing the advertising for the company, he was really under heavy expense, that he was entitled to the commission,—didn't think he was. We decided that if the board consisting of the two members from Great Falls, decided to give it to him, why, it was up to them. That was the very reason that the new contract was entered into and drawn up by Mr. Sidebotham, for the purpose of getting commissions upon all the options that had been heretofore granted by the company.

MR. GALEN: May the Court please, at this juncture I desire to have the record show that the United States Attorney has read Plaintiff's Exhibit 1, comprising the minutes of organization, and other matters pertaining to the corporation known as the Northwestern Trustee Company, and showing the minutes up to that date, and that until this time there has been nothing appearing in the record in any manner connecting the defendants Alderson and Rae, whom we represent, and until this juncture in the reading and presentation of these minutes, we have not been able to make a formal objection.

As to the defendants Alderson and Rae, we now object to all of the testimony which was offered, to this meeting of August 13th, 1913, and move to strike the same from the record; and that the jury be instructed to disregard the same in so far as



Alderson and Rae are concerned, because such evidence is in no manner material or relevant, and does not show or tend to show that the defendants Alderson or Rae, or either of them, in any manner or at all, were connected with an artifice or device to defraud by use of the United States mails; and further, that such evidence in no manner tends to show that they, or either of them, entered into any conspiracy for the purpose of an artifice or device to use the United States mails for the purpose of defrauding the public.

THE COURT: Well, the evidence is properly in the record, and cannot be stricken. If it does not affect these defendants at the end, why, instructions may be submitted at that time, and be given to the jury, along the lines of this objection or motion. At this time, the objection will be overruled, and motion denied.

Minutes of directors' meeting of August 2nd, 1913, found on pages 67 to 73, read, also minutes of directors' meeting of August 13, 1913, pages 74 to 77, Exhibit 1, read.

Whereupon a book was marked Exhibit 2, for Plaintiff, also another book, a continuation of the same thing, marked Plaintiff's Exhibit 3.

MR. WHEELER: We now offer in evidence Plaintiff's Exhibits 2 and 3, being the minutes of the executive committee of the Northwestern Trustee Company. It is dated August 21, 1913.

Admitted, without objection.

MR. WHEELER: (Reads.) And Exhibits num-

ber 2 and 3 plaintiff were thereupon read to the court and jury during the trial of said cause.

(Here insert Exhibits 2 and 3, plaintiffs.)

I was not a director at the time of that agreement. No, I don't think it was submitted to me at any time. I know Meyers had an option, and his option was passed upon in the minutes of July 5th.

**CROSS-EXAMINATION BY JUDGE SMITH:**

I started practicing law, I believe, in 1911. I was formerly in Mr. John F. Davies' office. We had a business arrangement, handling the business that came into the office, before I was a director in the Northwestern Trust Company. As I stated in my direct examination, Mr. Davies and Mr. Sidebotham were in Mr. Davies' office one night, and they came in where I was, and Mr. Davies stated that he was too busy to act as a director, and suggested to Mr. Sidebotham that I act.

At the time when I was actually elected a director, fifteen shares, I believe, was issued to me, by Mr. Sidebotham—transferred by Mr. Sidebotham, from that 2500 shares, I believe, that was issued to him in the first instance. He did give it to me. I paid no consideration whatever for it. I had no hesitation in taking it. They wanted me to act as a director. I knew that I had to be a stockholder to become a director, and I accepted. That appealed to me as a perfectly legitimate proposition. Mr. John F. Davies was an attorney in Butte.

Q. Mr. Haven, in order that the jury may understand, the capital stock of the corporation as indi-

cated in its minutes indicates what the number of shares that they are privileged to issue at a certain price per share?

THE COURT: That is a question that you need not put to the witness. That is something that you may state yourself to the jury when you come to the arguments. The jury understand it. It has been read from the articles that there were fifty thousand shares of stock at ten dollars a share, par.

Q. The only way to get assets into the treasury of a corporation when it is started out, is to sell capital stock, isn't it?

MR. WHEELER: That is objected to, as incompetent, irrelevant and immaterial. It is also a conclusion of the witness.

THE COURT: Sustained.

Exception noted.

The selling price of the stock was raised from ten to fifteen dollars a share. I was present when that was done. That was done at the first meeting, I believe, as shown by the minutes. I just got into the corporation, and the meeting was held within a day or two after I became director, after it was mentioned to me that I would become a director. I don't know anything about the corporation, as far as that went. I don't recall whether I voted for it or not. I don't recall that the minutes show that I voted for it. If I voted for it, I did so probably because the rest of the directors wanted it. I did not have any reason personal to myself for voting for it.

Q. Did you have any option at that time?

A. No, I don't think the option was given until the second meeting. I wouldn't state positively until I saw the minutes of the meeting, whether or not I had an option at that time.

Q. When you got your option, when you voted to raise the price of the stock from ten to fifteen dollars, did you know you were going to get an option?

A. No, sir, I did not. The option was given afterwards. I couldn't say without seeing the minutes of the meeting.

The selling price was raised from ten dollars to fifteen dollars.

Q. That has not anything to do with the par value, the par value as fixed in the first instance remained the same, did it not?

MR. WHEELER: Objected to, as not proper cross-examination, and calling for a conclusion.

JUDGE SMITH: If your Honor please, I want to show—

THE COURT: You will have plenty of opportunity to argue that.

JUDGE SMITH: I don't know whether they will take my word for it or not.

THE COURT: Objection sustained.

Exception noted.

Q. As I understand you, you voted to raise the price of that stock from ten to fifteen dollars, being unfamiliar with the affairs of the company, having no personal reason, and not knowing what the reasons of the other directors were. Is that true?

A. I said that I just got on the board.



Q. Have I given your reasons correctly? If I have not, say so.

A. Yes, it might have been discussed at that time, to raise the price from ten to fifteen dollars, in order that the stock might be sold more readily.

I don't recall, I couldn't tell, Mr. Smith, it is so long ago, it is three years ago since that meeting was held. I couldn't say whether that reason entered into it or not. I don't think I did have any reason for voting for that raise in the stock. I wouldn't say that discussions happened in that meeting, other than what appears from the minutes of the meeting. I might have told you that I thought some discussion was had, and probably it was had. I think it was. I couldn't state what it was. I am unable to recall whether any discussion was had along the lines of raising the price, the selling price from ten to fifteen dollars, in order to facilitate the sale of the stock, or anything in substance like that, and I will answer it, no. I couldn't say any particular time when such a discussion as that was had in my presence. It was my impression that such a discussion was had, whether it was had at any meeting, or whether it was had with Mr. Sidebotham at some other time, I couldn't state.

Q. Did that appeal to you as being a legitimate reason for raising the selling price? Did it enter into your vote?

MR. WHEELER: We object to that, as immaterial.

THE COURT: Sustained.



Exception noted.

I don't think any such reason as that actuated me in voting. Why, after that discussion was had with Mr. Davies and Mr. Sidebotham, I thought I was going to be elected a director, yes sir. Burlingame was not elected a director until I was elected, Mr. Smith. I never talked the matter of my election over with Meyers or Jim Burlingame, before I was elected. I made the motion to elect Burlingame a director. I think it was at the request of Mr. Sidebotham. I didn't know Burlingame. I never met Mr. Burlingame until I went to Great Falls afterwards. Well, I must have been informed by the parties that he was a stockholder, or I wouldn't have made a motion to elect him a director. I was taking Mr. Sidebotham's word largely; if he told me that Mr. Burlingame was a director, I was willing to accept his word. I think he told me that, or I wouldn't have made such a motion. I was a director at that time, and secretary and had access to the minutes. I think Mr. Sidebatham had the stock books. I didn't see the stock books. I had charge of the minute books. I didn't know that Burlingame was a stockholder, or not, when I nominated him as a director. I did it, the minutes show that I did it. I afterwards got an option. I couldn't tell the exact date without looking at the minutes, it shows in the minutes. I think it was after the first meeting. I wouldn't state positively, as I stated, without looking at the minutes. I got it for fifteen hundred shares, at ten dollars a share. It was

a transaction involving fifteen thousand dollars. I told you it was some time after the first meeting, I thought, that I got that option, as near as I can come to it. I didn't pay anything personally for that option. I didn't even pay the twenty-five dollars in cash. Mr. Sidebotham informed me that that had been paid in to the company. I didn't pay the twenty-five dollars in cash. Mr. Sidebotham, as I stated, informed me that it was paid into the company, by himself, I presume. He didn't state,—for me. I didn't make the statement yesterday that I paid twenty-five dollars for it. I said twenty-five dollars was paid into the treasury for it, I believe. I think I voted for my own option. According to what I read in the minutes, I believe I did, yes, sir, vote for my own option. That is all I can remember, what is in the minutes.

Q. You didn't think there was any moral turpitude connected with your voting to option it to yourself?

MR. WHEELER: Objected to, as improper cross-examination.

THE COURT: Sustained.

Exception noted.

I think I signed my own opinion, as a director of the Northwestern Trustee Company. After having read the minutes, Mr. Smith, believe I voted to grant the option, to give Frary and Burlingame an option at ten dollars a share, for twenty-five hundred shares. I knew what I was doing at the time. I don't give an excuse that I didn't know what I

was doing at the time. I was willing to give this option to Wilmot. There was no hesitation on my part in relation to that. I had fifteen shares that was originally issued to me by Sidebotham. That would be worth at par value one hundred and fifty dollars. No, I don't think there was anything said about legal services. Mr. Davies was representing the company as attorney at that time. I acted as secretary. I didn't do anything for the fifteen shares that were issued to me at the time I became secretary.

Q. Did the by-laws of the company, or any minute entry, or the charter, provide for a salary for the secretary?

MR. WHEELER: Just a moment. The by-laws themselves are the best evidence.

THE COURT: Sustained.

Exception noted.

Q. Is there anything now in the records of the company that you can put your finger on, in relation to a salary for the secretary?

MR. WHEELER: Just a moment. Objected to, as being improper cross-examination. The records themselves will be the best evidence.

THE COURT: It is wholly immaterial. The witness is not on trial. Whether this gentleman paid anything for his stock, or his option, or got anything for his services, is wholly immaterial.

JUDGE SMITH: It goes, if your Honor please, to his credibility as a witness.

THE COURT: Oh, no, he has not testified to

anything that the minutes have not shown.

JUDGE SMITH: He has shown himself in exactly the same situation as the defendant I represent.

THE COURT: The Court will sustain an objection to this character of cross-examination.

Exception noted.

I never sold any stock under my option. I believe I advertised once or twice, to sell some. I did not try to sell any outside of this advertisement. I finally transferred the option to Sidebotham and Wilmot. I think it was the Great Falls Tribune that I advertised in. I lived in Butte at that time. The substance of it was: Will sell Northwestern Trustee Company stock at ten dollars and a half a share, or something like that. I don't recall whether my name was signed to it, or whether I gave a box number.

Q. Isn't this what it said: "Will sell Northwestern Trustee Company stock at \$11.50 per share. Address Box 23, Tribune"?

A. That sounds like the ad; yes, sir.

I didn't advertise it in Butte, where I lived, for the reason that I thought the company was better known in Great Falls, and they would pay more attention to it in Great Falls. I don't know as I referred to any particular stock at that time.

Q. Did you have any control over any other stock? Did you mean to include other stock that you might have gotten under your option?

A If I could get it and sell a sufficient block of it, I did, yes.

Q. If a man had answered your ad there, and asked to buy a thousand shares of that stock, you would have exercised your option, and gotten the stock, and sold it to them, would you not?

MR. WHEELER: That is objected to, as being improper cross-examination.

THE COURT: Sustained.

Exception noted.

I didn't sell any of it. I finally got \$1,650.00 out of the deal. They bought the option. What led up to their buying it was, I had a conversation with Mr. Sidebotham and Wilmot, at 709 State Savings Bank Building, in Butte; they were going to take the option and sell it, and made a proposition, I don't recall just what the exact terms of it were; but I went East shortly after, and then I submitted them a written contract. The option was of value, if I could have gotten out and sold the stock. Well, there is no reason why a lawyer cannot sell stock. I never attempted to.

Q. I wish you would tell the jury what value that option had, which was merely the privilege of buying so much stock at a certain price, was it not?

A. That is all it was.

I finally got rid of it for \$1,650.00, to Sidebotham and Wilmot. I paid absolutely nothing for it.

Q. You did that through the medium of an ad in the Great Falls Tribune, in which you agreed to sell that stock at \$11.50 per share?



A. I wouldn't say whether that was the reason, or whether they wanted the stock, to buy the option, so that they could make a little money themselves.

Well, the par value of the stock was ten dollars when I put the advertisement in. The selling price of the stock I think was twenty dollars a share. I think it was \$10.50 I offered to sell it for. I wouldn't say for certain; it might have been \$11.50. It is two years ago—it is more than three years ago. I don't recall what it was. You have the advertisement there.

Q. Prior to the time that you put that advertisement in, offering to sell the stock for ten dollars and a half, or eleven dollars and a half, and prior to the time you sold your option to Wilmot and Sidebotham, for sixteen hundred and fifty dollars, you yourself had voted to increase the selling price of the stock to fifteen dollars, had you not?

A. I couldn't state absolutely whether I voted for it or not. I think perhaps I did. If the minutes show it, I did. I don't recall whether I dissented or not, but I don't think I did. I had also, as a director, voted to give Wilmot an option, prior to the time that I put this advertisement in the Tribune. I think it was prior to that. The price of Wilmot's option, as I recall it, was fifteen dollars.

Paper marked Defendants' Exhibit 4.

I say that I did sign that.

Defendants' Exhibit 4 read in evidence, without

objection, as follows:

Butte, Montana, January 22, 1914.

Robert R. Sidebotham,  
C/o Northwestern Trustee Company,  
Great Falls, Montana.

Have stopped advertisement in Great Falls Tribune pending developments. This is but temporary, however, and depends on developments within the next week.

LOUIS E. HAVEN,  
709 Sate Savings Bank Bldg.,  
January 23rd.

— —

Q. How were you paid for your stock, Mr. Haven?

MR. WHEELER: Objected to, as being irrelevant and immaterial, how he was paid for it.

THE COURT: Sustained.

Exception noted.

Q. You said on direct examination that two or three days after you put in the advertisement, Wilmot and Alderson talked with you about withdrawing the advertisement, unless my notes are in error.

A. I don't recall whether I said two or three days afterwards. I said they came into the office after this advertisement was in the Great Falls Tribune. I had a short conversation with them.

No, sir, I did not put the advertisement in for the purpose of attracting them over there, for that very purpose. I couldn't say how long after it was that I put the advertisement in. I meant J. G. G. Wil-

mot and Mr. Alderson, defendants. They came in to my law office, in Butte, together.

Q. Were they there for any other purpose?

MR. WHEELER: Well, just a moment. That is objected to, as calling for the conclusion of the witness, for what other purpose.

THE COURT: Sustained.

Exception noted.

I don't know what the first thing was that was said after they came in. I didn't say what time of the day it was, Mr. Smith. I don't think anybody was present but myself and Mr. Wilmot and Mr. Alderson. I don't recall the second thing said. I don't recall anything definite that was said, but I do recall the substance of the conversation. Both of them were talking to me. I gathered from the conversation that they both of them came there simply for the purpose of talking over the selling of this stock. As far as I know that is the only purpose; they just come to the office and talked it over. No, sir, I don't recall now any other purpose. So far as I know that is the only purpose for which Mr. Alderson came there. I sold the option shortly before it expired, I think it was the next spring. I recall Mr. Sidebotham and Mr. Wilmot being in my office on an errand very similiar to this one, to-wit, the sale of the option. Yes, I think that they were there. I wouldn't state when, though; I just have a sort of faint recollection of their being there.

Q. If I should call your attention to the date,

November 28, 1913, would you say that that was incorrect?

A. I wouldn't say whether November 28th, 1913, was correct, or incorrect; it is so long ago. I wouldn't say positively. I couldn't state positively whether they came and stated they came there to try to get me to stop the advertisement, as it was affecting collections, or not. Whenever they were in Butte, they generally came into the office. I don't say that they didn't, or I wouldn't say that they did. It is possible that they did, and it is possible that they did not.

Q. When you put that advertisement in, you know that nobody would pay fifteen or twenty dollars for the stock as long as they could get it from you for ten dollars and a half, didn't you?

MR. WHEELER: Objected to, as improper cross-examination.

THE COURT: Sustained.

Exception noted.

Q. Now, you say there was a misprint in the minutes of July 5th?

A. There is evidently a mistake there, because I was present in the morning at the meeting, I was present in the afternoon, but I was not present at night.

I was secretary at that time. If there was a misprint there, I don't know who made it. I say there is a mistake in printing my name in, showing I was there in the night session, as shown in the minutes of July 5th, I believe it is. Mr. Meyers signed them, as

secretary pro tem. I don't attach any impirtance to that misprint in the minutes; it is simply a mistake. Mistakes often occur.

Q. Even in writing up the minutes of a meeting, you have known it to occur have you not?

MR. WHEELER: Objected to, as incompetent, irrelevant and immaterial, and not proper cross examination.

THE COURT: Sustained.

Exception noted.

Q. Now, I understand you to say that the question of a raise in the selling price of the stock was not even discussed prior to the time that Mr. Bertoglio got his option?

A. Why it might have been discussed in an informal way. I don't recall any definite meetings at which it was discussed. I don't think it was discussed formally at any meeting. I don't remember whether I did say that on direct examination or not.

Q. Will you say now that that is not the fact, that it was not discussed at all, prior to the Bertoglio option? Are you prepared to tell the jury now that that is not the fact, that the selling price of the stock was not discussed at all, prior to the date of the giving of the Bertoglio option?

A. I don't recall whether it was or not.

No, I wouldn't say that it was. I know some question had arisen as to whether Mr. Sidebotham was entitled to commission on this optioned stock. I never took part in any of the meetings after the afternoon of July 5th. I don't know what was in



the second contract on that subject; I never read the second contract; I just heard it read here; I don't recall what was in it, in regard to that phase of it.

Q. Did you hear the matter of why it was necessary, why it was thought necessary to enter into the second contract, discussed?

A. Yes, Mr. Sidebotham talked it over with Mr. Meyers and myself.

Well, I don't recall the exact words that were said, but it was discussed, the advisability of having a second contract, so that Mr. Sidebotham would be sure of his commission. I don't think it was said that that provision was not in the first contract, as I recall the first contract; the question arose as to whether he was entitled to the commission on the optioned stock. I was a director when I heard that conversation. I was not present when that second contract was signed by the company; as I stated before, the last meeting at which I was personally present was in the afternoon of July 5th, 1913. However, I was director, I believe, until August. The matter had been considered at the morning session, at which I was present. It has not been agreed that a new contract should be entered into. I recall that. We took up the matter in the morning session. I was present at the afternoon session. I couldn't state positively whether there was an evening session. There was an adjournment until evening, but I was not there in the evening. There was a meeting in the morning of July 5th. It was adjourned until the afternoon. There was one in the morn-

ing that I attended, there was one in the afternoon that I attended; and that was all I attended. At some time on the 5th of July the matter of entering into this contract, changing the contract with Sidebotham, was discussed. He wanted it changed, and I at first rather demurred at changing it; Mr. Meyer and myself; there were three members on the board at that time. Meyers and I at first didn't like the idea; we thought, as long as the company was operating in Great Falls, they should have the full board before it was passed upon. I don't recall whether I was notified of that meeting, to be held on the 9th, or not. I think I signed a waiver. I would like to see the original. Well, I signed a waiver as to those meetings; I guess it is the same as it is on here. I signed that one: "I hereby consent that a meeting of the Board of Directors of the Northwestern Trustee Company may be held on July 9, 1913, and that any and all business of the"—it says "may", probably should be "company"—"may be transacted during my absence as fully and to the same extent as if I were present." In regard to those waivers, I would like to state that,—I believe that Mr. Sidebotham came over to Butte, he said he wanted to get the minutes fixed up, and I signed the waivers for the meetings I was not present at in Great Falls. I signed them after the meetings were held.

Q. They are ex post facto, then, are they?

A. They were even signed after I ceased to be a member of the board of directors.

He wanted the minutes to show that, while I was a director, I consented to those transactions. I did that. He said he wanted to get the minutes fixed up.

I think Wilmot and Sidebotham did also come to see me at one time about my option. I wouldn't say positively, but I think they were in the office. I think they came one time relative to running the advertisement in the Great Falls Tribune. I think something was said about taking it out. I couldn't state what their primary object was. They did talk about it. I don't recall anything else that they talked about at the time. I did not testify that Mr. Sidebotham ever claimed a commission on this sale of the original 2,500 shares of that promotion stock.

Q. Do you understand that he ever claimed any commission on any of the ten-dollar stock?

MR. WHEELER: Well, just a moment. That is objected to, because the contract itself is the best evidence as to what—

THE COURT: Yes, the objection is sustained.

JUDGE SMITH: Note an exception.

Q. Mr. Haven, you spent the summer as a guest of the U. S. Attorney, at Lake McDonald, or a part of it, did you not?

A. I was up there; I was up there a month.

Q. As a guest?

A. I was up there as his guest.

I could not give you approximately the time of the year when Mr. Alderson went to our office, on the occasion that I mentioned. I put the advertise-

ment in the paper in Great Falls with reference to the sale of this stock. I would not say it was about January 23rd, 1914, Mr. Alderson came to me; it was the time one of those advertisements was in the paper, he came to me with Mr. Wilmot. I advertised, I think, twice. I couldn't say as to how far apart in time. Mr. Alderson came to the office on one other occasion. I wouldn't say whether it was before or after. I know I had a case pending when Mr. Alderson came into the office, and I believe he fixed out an application for a change of venue in my office, an affidavit for a change of venue, and also a demurrer, as I recall. I accepted service and filed it.

Q. Now, to refresh your recollection, the record, if I may be permitted, shows that your praecipe for default on December 9, 1913, was entered. I will ask you if it is not a fact that after that default was entered, Mr. Alderson went to your office to consult you about having that default opened, or making some arrangement concerning the settlement of that case?

A. I believe he did come to the office once in regard to the settlement of the case.

Q. I will ask you whether or not on the date of which you speak, you say you had a conversation with Mr. Alderson and Mr. Wilmot, concerning this stock, I will ask you if it is not a fact that Mr. Wilmot was in your office, went up there to see you concerning these options, and Mr. Alderson came in



while Mr. Wilmot was there to consult you about this matter?

A. No, when they came up they both talked about this matter, about the sale of the stock.

I don't recall who opened the conversation on that. I don't know who closed it. Well, they both did an equal share of the talking. I couldn't say definitely that Mr. Alderson talked a minute, Mr. Wilmot likewise talked a minute. I know they just happened in the office, and we talked it over for a little while, and I told them I would withdraw the advertisement. I don't recall on that occasion talking to Mr. Alderson about anything else. I wont say that I did or didn't.

Q. I will ask you if it is not a fact that Mr. Alderson went to your office on that date to consult you concerning the case of National Insurance Company against W. B. Norman, you being one of the counsel for the plaintiff, and Mr. Alderson being the counsel for the defendant?

A. I don't know what purpose Mr. Alderson had in coming to the office at the time I mentioned. I know they came to the office and talked about this matter, about the advertisement.

Q. Did he talk to you about this case on that date?

A. I don't recall. I wont say that he didn't, and I wont say that he did. I am sure about his talking to me about the Northwestern Trustee Company case.

Q. What is the occasion that makes your recol-



lection better with reference to the Northwestern Trustee Company matter than your recollection about this business that Mr. Alderson had with you?

A. I don't know any reason that my memory should be any better, but I do recall those facts.

Q. When did you first talk, if you ever talked with counsel for the Government, with reference to Mr. Alderson's visit to your office?

A. Well, I think it was in 1913, that I talked to Mr. Kelly, and he told Mr. Wheeler, and he told me at that time he learned—he told me that he had learned that I had some connection with the Northwestern Trustee Company, that Mr. Alderson had mentioned my name to him in a conversation he had with him. As I recall, Mr. Wheeler told me that Mr. Alderson had come to his place when he was sick, and wanted to know whether or not I was the one who had notified the Government concerning the Northwestern Trustee Company, and—I think this was in 1913. I would be only too glad to give you the exact date if I possibly could, that I talked to Mr. Wheeler. I think it was in 1913.

I sold my option to Wilmot shortly before it expired, I believe it was. Oh, I want to correct that. I talked to Mr. Wheeler, it was shortly before this case was investigated by the grand jury, I think, 1915, instead of 1913.

Mr. Alderson was never at any stockholders' meeting or had anything to do officially with this company until March, 1914. While I was connected with the company Mr. Alderson was not. That was from

April to August, 1913. It is my recollection that Alderson and Wilmot both came in together. And it is likewise my recollection that they both talked about the Northwestern Trustee Company stock. There is not any doubt in my mind that Mr. Wilmot and Mr. Alderson came up to the office and had a conversation, the substance of which I gave. They talked to me about it, about running the advertisement in the Great Falls Tribune.

Q. Did Mr. Alderson tell you that he was interested in the Northwestern Trustee Company, selling the stock?

A. I don't know whether he said he was interested or not.

I permitted him to come into our office and talk to me about a matter which, if I knew that he had no interest in, I wouldn't put him out, if he wanted to.

Q. Did you ever have any conversation with the United States Attorney prior to the investigation had by the grand jury as to the possibility of your being indicted for your participation in the organization of the Northwestern Trustee Company, and your taking an option on this stock at ten dollars a share, while you were a director, and then voting to raise it to fifteen dollars a share, and attempting to sell the stock under the price which the company fixed, and forcing Sidebotham and Wilmot to pay you \$1,650.00 for it?

Mr. WHEELER: I object to the form of the question. I haven't any objection to his asking —

THE COURT: Sustained.

Exception noted.

I had a conversation with the United States Attorney about the possibility of being indicted in connection with this company. I had a conversation once with Mr. Wheeler, in the Butte Grill. I believe it was after they had started to investigate the Northwestern Trustee Company. Mr. Wheeler told me that he was going to indict me in Helena, and on that occasion, and while the grand jury was in session, or when they were called here. I told Mr. Wheeler not to do anything just because he knew me, but to go ahead with any indictment. I told him if there was anything wrong, so far as I was concerned, to go ahead. I told him that on two different occasions, just the same as I could tell you, or anybody else. I was not a witness before the grand jury. I don't know as I ever outlined to Mr. Wheeler in reference to my testimony here. Mr. Paisley I know came into the office one time and asked me what I knew about it. I told him. They asked me to go over the minutes to refresh my memory just before I went on the stand, and I was in the Clerk's office and looked at those minutes. I know that I succeeded one of the directors. I wouldn't say that it was Mr. Davies. I wouldn't state if I went on the board of Mr. Davies' place. There were two vacancies, or one vacancy created.

Q. As a matter of fact, referring to page eight of Exhibit No. 1, to refresh your recollection, I will read you: "The resignation of the Director and

Treasurer Edwards was on motion duly made and carried, accepted by the unanimous vote of the Directors present. On motion of Mr. Risley, seconded by Mr. Davies, Louis E. Haven was nominated and elected director of the company, in place of W. W. Edwards, resigned."

MR. WHEELER: That is objected to, as improper cross-examination. Mr. Haven was not at the meeting at all.

THE COURT: What materiality is this?

MR. KELLY: His interest in this case, and his credibility.

THE COURT: I know, but that does not make it material. The objection is sustained.

Exception noted.

Q. Then I will ask you if you do not know as a matter of fact that Mr. Davies didn't resign for nearly a month after you went on the board?

MR. WHEELER: That is objected to, as incompetent, irrelevant and immaterial, improper cross-examination.

THE COURT: Objection sustained.

Exception noted.

Q. Referring to the examination-in-chief by counsel for the government, I will ask you whether or not you were not asked this question, and made the following answer; "You may state if you will how you came to be a member of the Board of Directors of the Northwestern Trustee Company.

Answer:—Well, in April, 1913, I was associated with John F. Davies, in his law office, and one even-



ing Sidebotham was in the office, and John F. Davies came to me with Sidebotham and told me he didn't have time to act as a director and officer of the company, and told him that he thought I would act as director and officer in his place''?

A. I believe that is correct, yes, sir.

They had that conversation. Mr. Paisley, whom I talked this over with, is a Government Inspector; he said he was. I did not talk this over with the counsel for the government at Lake McDonald during the summer while I was with him. I don't think it was mentioned; no, it was not mentioned. The fact that I was not indicted by the grand jury in connection with the other defendants in this case has no bearing on the matters concerning which I have testified to here, not a bit.

#### CROSS-EXAMINATION.

#### BY JUDGE CALLOWAY:

I said I was in Great Falls on the 5th of July, 1913, at the time the directors met there. Mr. Speer's office was at that time in the Tod Building. It is a large, stone building. I thought it was the Tod Building. It may have been the Phelps Building. I know the Northwestern Trustee Company at one time had an office underneath. I know it was in Mr. Speer's law office. I am not sure it was in the Tod Building. I am sure we had this meeting in his office. That office had two rooms. The outside room was a reception room, and the inside room was the ordinary place where he did his business. The inner room was simply used as a matter of accommo-



dation, by the company, at that time. The only time I recall Mr. Speer coming in was, I believe, we were discussing something about increasing the number of directors, and there was some question arose, and we wanted the Montana codes, and Mr. Speer came in and told us where the codes were; that is the only time I recall Mr. Speer coming in. I don't know whether he was attending to his law business; he seemed to be attending to his own business at that time, except on that occasion.

## RE-DIRECT EXAMINATION.

BY MR. WHEELER:

I remember the time that I talked to you in the office at the Federal Building, at Butte. Well, I think the first time I gave you the details was since I came to Helena, and found out what you wanted me to testify to, that is, in regard to identifying the minutes of the meeting. The first time that I talked to you about identifying the minutes, or about my testimony, was here, since I came here to Helena, under subpoena. Nothing was said, in fact, this last time, or when the grand jury was in session, as to whether or not I would be indicted by the grand jury. While the grand jury was in session, and prior to the time that the grand jury was in session, I know I told you on two different occasions not to hesitate because you knew me. As a matter of fact, you told me you were going to present the case to the grand jury against me, and all the rest of the defendants in this case.

## RE-CROSS-EXAMINATION.

BY JUDGE SMITH:

I met Mr. Paisley when the University Club was opened in Butte. I wouldn't state just exactly how long ago, Mr. Smith, but he was up there one time; I believe he came up. I would say I knew Mr. Paisley about a year or so before I talked with him concerning this case. I had seen him up to the University Club several times. He didn't go to school with me. We did not graduate from the same university, or go to the same university.

Witness excused.

Whereupon R. H. Atkinson, a witness called and sworn on behalf of the Government, testified as follows:

## DIRECT EXAMINATION.

BY MR. WHEELER:

My name is R. H. Atkinson. I am a salesman. I have several different lines. I am with the McCaskey Cash Register Company, C. E. Shepherd & Company, and Ebry Cash Register Company. I had occasion to work for the Northwestern Trustee Company, from about the 6th of July, 1913, until April, 1914. Part of the time I was bookkeeper, and part of the time assistant secretary. My salary was from \$125 to \$150 a month. My wife's name is May Atkinson. I am acquainted with Mr. Alderson, and Mr. Rae, Mr. Sidebotham, Mr. Wilmot, Mr. Tobin, Mr. Rainwater, Mr. White, and also with Mr. Speer, and Mr. Bertoglio. Plaintiff's Exhibit 2 I have seen before, in the office of the company,

during the time I was with them. It is Mr. Wilmot's signature on the first page. I am familiar with his signature, have seen him write. On page four is Mr. Wilmot's signature, on the minutes of October 6th, 1913. Above the word "Chairman" is Mr. Wilmot's signature. The name R. H. Atkinson is my signature. The signature J. G. G. Wilmot at the bottom of page numbered and designated as two is Wilmot's signature. Beginning at the bottom of the meeting of October 10th, 1913, that is Wilmot's signature. October 23rd, where it is signed, the name above the word "Chairman", is the signature of Mr. Wilmot. And the signature Robert Sidebotham, to that consent, dated January 5th, 1914, or the consent of the meeting to be held on January 5th, 1914, is the signature of Robert Sidebotham. I kept these minutes, the time I was there. I am familiar with the signature of A. M. Alderson. In my opinion that is his signature at the bottom of minute book dated March 19, 1914. The signature of William C. Rae I am familiar with. In my opinion that is the signature of William C. Rae. And it is the signature of Sidebotham. And the signature of J. W. Speer. I have seen his signature a number of times, and know it; that is the signature of Mr. Speer, I believe. The signatures of W. C. Rae and Robert Sidebotham, designated at the bottom of the minutes March 19, 1914, on page designated as two, are the signatures of those gentlemen.

I did not take an option on stock in the company

while I was connected with the company as secretary. It was more in the nature of a subscription. I handled the transaction. The purpose was to make some money out of it, you might say, and I subscribed for a thousand shares of stock, at fifteen dollars per share; one thousand, at fifteen dollars. That was before the raise had taken effect. I think it was after the stockholders had voted to increase the price of the stock from fifteen to twenty dollars; and at the time I took the subscription I knew that it was to be increased. The matter had been talked among some of the stockholders and had been voted on at the meeting of the stockholders. I never had any conversation with Mr. Alderson or Mr. Rae with reference to the raising of the price of this stock from fifteen to twenty dollars a share. There were a number of conversations had. It was discussed there pretty fully in the stockholders' meeting. It was discussed more or less in a general way. There was several objects. The principal object in the stockholders' meeting that was discussed there was creating a surplus of the extra five dollars a share. After the stock was voted to \$20.00 a share, there were a number of other subscriptions somewhat similar to this one that was given; one option, I believe. The option that was granted to D. G. Bertoglio for 10,000 shares, was granted before my connection with it. I held my subscription for quite a while and tried to dispose of it, then sold it to Sidebotham and Wilmot, under the condition that they were to pay so much a share, and take it up, or han-



dle it rather. There was one payment of cash, and several notes given. Two hundred and fifty dollars cash was paid, and the balance was represented by notes. Something was said by Sidebotham to me with reference to taking this subscription. I don't remember the exact words that were said; I know that the matter was talked over, and terms were agreed on. I don't remember very much that was said; I know that we talked over the matter, and finally concluded to make one cash payment, and the balance represented by note. I think I suggested it first myself. There was a contract that there was to be so much a share paid, fifty cents a share, for transferring my subscription to him. It was to be paid after the stock was to be sold. That was the agreement between Mr. Sidebotham and me, that he was to pay me fifty cents a share for the stock sold by him, under the last contract, disposing of it from me to Mr. Sidebotham. The selling price of the stock at that time was twenty dollars per share.

When I went to work for the company I was bookkeeper at first. I did not have occasion to have any conversation with Mr. Rae or Mr. Alderson with reference to signing their names to anything until after they came in as directors; it was quite a while after I went to work there. Why, at the time that Mr. Rae was elected secretary and treasurer, I kept books for him for awhile, and the receipts would be signed in his name for the payments that were made. There was a rubber stamp made about that time that I left there.



I don't remember the exact conversation; the substance of it was for me to go ahead and get a rubber stamp made, and I ordered one from the Tribune. I ordered a rubber stamp from the Tribune. It was the ordinary signature stamp; I don't what else you would call it; a facsimilie of Mr. Rae's signature. The purpose of it was to use in issuing receipts and such as that in the office, simply using it for receipts. Mr. Rae furnished the signature, and I took it over to the Tribune office. I saw the rubber stamp there afterwards. I was not there when it came in, however.

There was conversation between Mr. Sidebotham, myself and Mr. Wilmot with reference to the purpose for which I was taking this stock, or subscribing for the stock. Well, the stock was going up in value, it was selling at \$20 a share, what I wanted to do was to sell it for \$20 a share, and make the extra \$5. That is the idea, I could get it and sell it for \$20, and make the extra \$5.

Oh, I hardly know my financial standing, Mr. Wheeler, exactly; I didn't have so very much cash. The notes that I gave were carried among the assets of the company until the time I left there. There was an affidavit made as to the condition of the finances which was afterwards sent out, and mailed; if that is what you have reference to. While I was secretary, or assistant secretary of the company, I had occasion to see notes of Mr. Alderson or Mr. Rae in the records of the company. They were there when I left.

Plaintiff's Exhibit 5 is one of the ledgers of the company. That is another ledger, Exhibit 7, is the same, subscription ledger of the Northwestern Trustee Company. I did not make a copy of the notes of either Mr. Alderson or Mr. Rae; I simply entered the data in reference to them on the ledger. On page one of Exhibit 7, those entries were made by Mr. Finley. Mr. Finley got up a set of books for the company. He is an accountant. I know Mr. J. J. Ives. An option was granted to Mr. Ives. I don't remember the exact date. I think it was sometime in August, 1913, about that time. I think it was five hundred shares. It was discussed between Mr. Sidebotham, Mr. Wilmot, in the office of the Northwestern Trustee Company. The option was drawn in the office. It was discussed between Mr. Sidebotham and Mr. Ives.

I did overhear a conversation between Mr. Scherer and Mr. Sidebotham about the month of October, 1913. I heard several, two or three conversations between them about that time.

Q. What, if anything, was said by Mr. Sidebotham to Mr. Scherer with reference to the company paying any dividends?

A. There was a statement made that the company would pay a dividend the first of the following January, 1914.

Q. What, if anything, was said by you to Sidebotham at that time with reference to it? Was anything said by you?

A. Not at that immediate time. There was

some conversation about it afterwards.

Q. How long afterwards?

A. Oh, after Scherer left the office some time.

We discussed the matter of whether or not the company would pay a dividend at that time, and I told him I didn't think it could, and he said it would be all right, Sherer wouldn't remember it, something of that kind, he would forget it.

I did know a Mr. Grogan that was connected with the company. He was treasurer of the company, and one of the directors. Mr. McVeigh was a resident of Great Falls, and spent part of his time there, and part of the time in Canada. I remember when Mr. Rae became treasurer of the company. At the time that Mr. Rae took over the books of the company, the notes and subscriptions of the company were delivered to him. The books had been audited a very short time before that, and a report made on them.

None of the stock was sold by Mr. Sidebotham upon the subscription which I transferred to him, of my own knowledge.

MR. MURPHY: This is the minutes of the executive committee of August 26th, 1913, Plaintiff's Exhibit 2. (Reading.) Great Falls, Montana, August 26th, 1913.

The members of the executive committee of the Northwestern Trustee Company met at the office of the company on Tuesday, August 26th, 1913, at 8 P. M.

Present: J. G. G. Wimot, R. R. Sidebotham, E.

H. Dalbey, J. R. Grogan and E. H. Cooney.

The minutes of the meeting of August 22nd, 1913, were read and ordered approved as read.

A motion was made that the by-laws be amended to give the Executive Committee power to appoint an advisory board in different localities, said Board to have power only to advise the board of directors, or executive committee, relative to loans or purchases in their immediate locality, said reports not to be binding upon the board of directors, or executive committee. Which said motion was duly seconded and carried.

The books of the company were examined, and the secretary reported on hand a sum in excess of 90,000 in cash and notes receivable. The secretary was instructed to ask the auditor, W. B. Finley, for a certified statement of the amount of cash and notes receivable, on hand as of this date.

And that \$90,000 which is mentioned in the minutes of August 26th, 1913, the notes of Alderson and Rae were carried in that list. I don't believe any notes were given by Louis Haven. I don't think the options were included in that \$90,000, just the notes and cash. My wife's subscription note was included in that. It was, if it was given prior to that date. I don't remember the date of the note exactly. The ledger will show that, however.

MR. MURPHY: In the minutes of the meeting of September 16th, 1913, Mr. Kelly, on the second page:

“A motion was made that Mr. R. R. Sidebotham



be instructed to go to Spokane, Washington, and if necessary, as far as Seattle, to locate someone who is thoroughly acquainted with the home building, and unit system plan, as operated by other Trustee companies, and enter into negotiations with him to come to Great Falls, Montana, and take charge of the certified guaranteed note and unit system for the time being, and report to the next meeting of the executive committee, the necessary traveling expenses of the said Sidebotham to be paid by the Northwestern Trustee Company.

Which said motion was duly seconded and carried by unanimous vote."

MR. MURPHY: Mr. Grogan was chairman, and E. H. Dalbey was secretary at the meeting which I have just read. Present, the chairman J. G. G. Wilmot, being absent, J. R. Grogan was nominated as chairman pro tem, and elected by unanimous vote as chairman of the meeting. Those present were Robert R. Sidebotham, E. H. Dalbey, J. R. Gorgan, and E. H. Cooney.

Continuing reading the minutes of September 16th, 1913:

"The assistant secretary was instructed to have printed circular letters sufficient to be sent to each stockholder, in the following form, as submitted by Mr. Robert R. Sidebotham:

Dear Sir—

We beg leave to call your attention to the fact that the home building department of the Northwestern Trustee Company is now ready for opera-



tion. Enclosed, you will find a circular on the certified guaranteed notes.

The company, in this plan, will pay you six per cent on your savings, four per cent ninety days, five per cent six months to one year. The certified guaranteed notes are as safe as the savings bank, and behind each note issued is deposited first mortgages upon real estate of twice the valuation of the certified guaranteed notes.

You will probably be interested to know that the company has purchased a tract of ground at the south-east corner of Second Avenue and Eighth Street north. The size of the plat of ground is 75x150 feet. The company proposes to improve this property in the near future with an up to date modern apartment house.

The company stock is selling rapidly at twenty dollars per share, and we will appreciate your sending in the names of three friends who might be interested in either the certified guaranteed notes, or stock of this company.

Co-operation is the explanation of efficiency with the Northwestern Trustee Company, and your co-operation with is will assist materially in making a greater success of what is to be the strongest concern of its kind in the entire north-west. In options, contracts, notes receivable, cash and real estate this company now has over \$585,000. We are also in position to make farm loans, on farm property.

Thanking you for your co-operation, we are

Yours very truly,

Northwestern Trustee Company

Robert R. Sidebotham, President.

There being no further business, meeting adjourn-  
ed.

Signed J. R. GROGAN,

Chairman.

E. H. DALBAY,

Secretary.

— —

Mr. Dalbay was secretary, and I was assistant at the same time.

Q. At the time of this statement mentioning \$585,000 worth of notes receivable, cash, real estate and contracts and options, let me ask you if included in the assets mentioned, there was the option of Louis T. Haven, the option of Sidebotham, the option of Wilmot, your own subscription, and the option of Bertoglio and of Meyers?

MR. KELLY: That is objected to, as incompetent, and not the best evidence. He has not qualified himself to tell. He is drawing a conclusion.

THE COURT: If he knows, he may answer.

Exception noted.

A. They were all included.

MR. MURPHY: The minutes of October 6th, 1913:

The members of the executive committee of the Northwestern Trustee Company met at the office of E. H. Cooney, in the federal building, on Monday,

October 6th, 1913, at eight o'clock p. m. Present J. G. G. Wilmot, Robert R. Sidebotham and E. H. Cooney. Absent E. H. Dalbay and J. R. Grogan.

MR. MURPHY: The meeting was called to order by the chairman. The matter of the Bertoglio option was fully discussed. Mr. E. H. Cooney offered the following resolution:

That the spirit of the Bertoglio option be that notes to the extent of three thousand dollars be accepted in lieu of cash, and the stock be issued for the one thousand dollars cash already paid.

After a full discussion, the following resolution was adopted by unanimous vote.

Q. Mr. Atkinson, were you present at the discussion of the cancellation of,—were you present at the time that this resolution was passed:

It was moved by Mr. Robert R. Sidebotham that the two subscriptions Ethel May Calder for \$2,010 and J. H. Calder for \$15,000 be canceled, and the notes given by the two parties be returned to them, together with the cash paid in by them, and the matter dismissed.

Mr. Atkinson, were you present at the discussion of the cancellation,—were you present at the time that this resolution was passed, with reference to the Calder note, and the May Calder note, and J. H. Calder note?

A. Yes, sir.

The reasons given for cancelling these notes and returning the cash: The subscriptions had been given, and the Calders wanted their subscriptions

returned, and one or both of them, I believe, were at one of the meetings( or shortly before the meeting they were there, and the matter was brought in the meeting, and decided to return it to them. The reason given by the Calders was, that one of the subscriptions, he was to have a certain amount of work given him, and he had not had the work because they had not gone ahead with the building. The matter was discussed by Calder, with Sidebotham and myself before the meeting, and the statement was made at the meeting, I don't believe that Calder was at the meeting of the board. R. R. Sidebotham made the motion. Then Mr. Sidebotham made the statement, he was the man that made the motion. The substance of the statement made by Mr. Sidebotham was that Calder had not received the work that he expected, or had been promised, and turned back the note, and all, to avoid any further trouble.

Q. Now, at the time, Mr. Atkinson, that this circular letter signed by the Northwestern Trustee Company, Robert Sidebotham president, which was authorized to be printed and sent out, in which circular was mentioned that the company had an option, contracts, notes receivable, cash, real estate—that the company had in options, contracts, notes receivable, cash, real estate, over \$585,000, do you know whether the notes or the subscriptions of Ethel May Calder or J. H. Calder were included in the statement?

JUDGE SMITH: This is covered by the Court's last ruling, I suppose.

THE COURT: Yes, it will be understood that the objection was made and overruled, and exception noted.

A. They were included.

MR. MURPHY: The minutes of this meeting, which I have just read, are signed by J. G. G. Wilmot and E. H. Dalbay.

The minutes of October 10th, 1913:

The members of the executive committee of the Northwestern Trustee Company met at the office of the company, on Wednesday, October 10th, 1913, at eight o'clock p. m. Present: Robert R. Sidebotham, J. G. G. Wilmot, E. H. Dalbay, and J. R. Grogan. Absent, E. H. Cooney.

It was moved by Mr. Grogan, seconded by Mr. Dalbay, that the Wallace C. Coburn option of 1334 shares, the first payment thereon be extended to November 15th, 1913. Which said motion was carried by unanimous vote.

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Mr. Wallace C. Coburn was a subscriber of the stock, and lived at Malta.

JUDGE SMITH: I would like to make one inquiry of the Court, whether the understanding of the Court is, where one objection is made by counsel for one of the defendants, it will apply to all of the defendants, and need not be repeated?

THE COURT: Well, I don't know about that.

JUDGE SMITH: Of course, there are some general objections.

THE COURT: General objections might, but



special objections, I don't see how they could be applied. Proceed.

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Mr. Wallace Coburn was not an agent of the company, that I know of. I was present at the time the option was granted to Mr. Coburn for 1334 shares. I don't remember the date that was granted. It was some time in August, I believe. Fifteen dollars a share, the price was. With reference to when the price of the stock was raised to twenty dollars, it was before. The stockholders' meeting was on the 13th of August, and the price of the stock was raised some time after that, I expect, raised to take effect sometime after that, the 25th, I believe. I don't remember the date of his option. It was before the raise took effect. I was present at the stockholders' meeting at which the price of the stock was raised. The defendants Mr. Sidebotham and Mr. Wilmot, that appear here in Court, were present at that stockholders' meeting.

THE COURT: I assume that is in the record itself.

I was present at the meeting at which Mr. Alderson and Rae were elected directors of the company. I don't remember the date I first met Mr. Alderson. It was some time, I think, about the first of January, 1914. The first time I saw Mr. Rae was when they were over one day at a meeting of the board, he and Mr. Alderson were there. The time when I first saw them there they were not directors of the company. They were elected directors of the com-

pany a very short time after that. I never had any conversation with them with reference to their becoming directors of the company. They came up to the office when Mr. Sidebotham was there, and several others; Rae and Alderson and Sidebotham, and several others. The statement was made that it was their intention to have them as directors, and some local directors were going to resign. Rae and Alderson were to come on the board; some of the local directors were to resign. Mr. Henry Meyer was one who made that statement, and Mr. Sidebotham, and I don't know whether any of the others made it or not.

The stockholders had no trouble at a stockholders' meeting there. The directors were deadlocked for a while; they tried to have a meeting, but there was no quorum present. Alderson and Rae became directors. That was just about the same time, just before they became directors.

Q. Do you know from talks to Mr. Sidebotham or Wilmot, what, if anything, was said with reference to Alderson and Rae becoming directors of the company?

A. The matter was talked over between Mr. Sidebotham and Mr. Meyers. I know both said that they wanted them on as member of the board, and they were there waiting for the meeting to be called.

At the time that they came there, Mr. Rae had a subscription for, I think it was, twenty-five hundred dollars, and Alderson for, I believe it was, five thousand. There had been nothing paid at that

time, simply the notes.

In Plaintiff's Exhibit 7, the word "Cancelled" is not my handwriting.

Subscription list, Exhibit 7, was received in evidence, without objection.

On page 1, dated 1913, 5 5, Rae, William C. contracts, \$2500, total 2500, year, 1915, June 5th, cancelled. "Cancelled under contract," it says "\$2500." Mr. Rae or Mr. Alderson, they each subscribed for one share of stock, at twenty dollars.

MR. MURPHY: The minutes that we have just read are signed by R. H. Atkinson, as secretary, and J. G. G. Wimot Chairman.

The minutes of March 19th, 1914:

Great Falls, Montana, March 19th, 1914.

The members of the newly elected executive committee met at the office of the Northwestern Trustee Company, rooms 603-604 First National Bank building, Great Falls, Montana, on Thursday, March 19th, 1914, at eight o'clock p. m. President: Robert R Sidebotham, William C. Rae, and A. M. Alderson. Absent, Messrs. Paris Gibson and J. W. Speer.

We, and each of us hereby consent that a meeting of the executive committee may be held at the office of the Northwestern Trustee Company, 603-604 First National Bank Building, Great Falls, Montana, on Thursday, March 19th, 1914, at eight p. m. and any and all business transacted as fully, and to the same extent as if we, and each of us were present. Robert R. Sidebotham, A. M. Alderson, W. C. Rae, Paris Gibson, J. W. Speer.

Mr. Robert R. Sidebotham was elected temporary chairman.

It was moved by Mr. Alderson that inasmuch as on April 5, 1914, the company will have to seek new quarters on account of the fact that Mr. A. D. McVay, the party holding the lease on the present quarters, has requested that we vacate, the executive committee, after the consideration to cut down expenses, recommends that the company shall pay rent to Sidebotham and Wilmot for such space as may be required to handle their business, at the rate of fifteen dollars per month, all the other expenses of the office to be borne by Sidebotham and Wilmot, fiscal agents, except the salary of such employe or employes as shall devote their entire time to the business of the company. Which said motion was duly seconded by Mr. Rae. A vote being taken, the motion was declared carried by unanimous vote.

It was moved by Mr. Alderson that the company shall pay one half the expense of producing facsimilie letters from prominent stockholders, the idea being that a portion of these letters shall be used by the fiscal agencies in promoting sales of the capital stock, the other one-half to be used by the company itself to submit<sup>to</sup> the various stockholders and to assist in the collection of its notes. Which said motion was duly seconded by Mr. Rae. A vote being taken, the motion was declared carried by unanimous vote.

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I was present at that meeting. I didn't myself have any circular letters printed. As secretary I



did not have anything to do with the getting of them printed. There were a number of letters printed. I don't know that I could name all of them; one of them from Bertoglio, and one from the Bank of Shelby, several different letters. There were circular letters sent out, just the ones that that included, I don't remember.

MR. MURPHY: Further reading from the same minutes:

A motion was made by Mr. Rae that the options of Messrs D. G. Bertoglio, J. G. G. Wilmot, Henry A. Meyer, Robert R. Sidebotham and L. E. Haven shall be, by A. M. Alderson, re-drafted and spread upon the minutes of the executive committee in accordance with the understanding entered into by the members of the committee in attendance at this meeting. Which said motion was duly seconded. A vote being taken, the motion was declared carried by unanimous vote.

It was moved by Mr. Rae that the proposition submitted voluntarily by the fiscal agents, Messrs. Sidebotham and Wilmot, that not less than one fourth of all the stock sold in the future shall be treasury stock, be accepted. Which said motion was duly seconded by Mr. Alderson. A vote being taken, the motion was declared carried by unanimous vote.

In accordance with the above resolution, it is understood that Robert R. Sidebotham has a right to dispose of any shares of stock that he may have received as commission, and it is thoroughly understood, however, that out of every four shares sold,



one share shall represent treasury stock.

Q. Do you know how much stock, Mr. Atkinson, was in the treasury at that time, that had not been optioned out?

MR. KELLY: Objected to, as not the best evidence.

THE COURT: Objection sustained.

A. No, sir, I don't.

"It was moved by Mr. Alderson that the matter of rewriting the books of the company be left entirely to Mr. Rae, the expense thereof to be borne by the company. Which said motion was duly seconded. A vote being taken, the motion was declared carried by unanimous vote. There being no further business, the meeting adjourned.

Signed William C. Rae, Secretary.

Robert R. Sidebotham, Chairman."

Reading from the minutes of March 20th, 1914.

Great Falls, Montana, March 20, 1914.

A meeting of the executive committee of the Northwestern Trustee Company was held at the Hotel Rainbow, Great Falls, Montana, on Friday, March, 20, 1914, at five thirty p. m. Mr. Robert R. Sidebotham, Chairman, presiding. Present: Messrs A. M. Alderson, J. W. Speer, Robert R. Sidebotham. Absent: Messrs. Paris Gibson and Willian C. Rae.

We, and each of us hereby consent that a meeting of the executive committee of the Northwestern Trustee Company be held at the Rainbow hotel, Great Falls, Montana, on Friday, March 20, 1914, at five thirty p. m., and that any and all business may

be transacted as fully and to the same extent as if we and each of us were present. Robert R. Sidebotham, A. M. Alderson, Paris Gibson, William C. Rae, J. W. Speer.

In the absence of the secretary, Mr. J. W. Speer was appointed secretary pro tempore.

The minutes of the last meeting were read, and approved as read.

The re-draft and changes in the condition of the options of Messrs. D. G. Bertoglio, and J. G. G. Wilmot, and Robert R. Sidebotham were ordered spread upon the minutes of this meeting, in accordance with a motion of Mr. William C. Rae, at the meeting of the executive committee on the 19th day of March, 1914, to become effective on this date.

In accordance with the motion made by William C. Rae at the meeting of the executive committee on March 19, 1914, that the options of D. G. Bertoglio, J. G. G. Wilmot, Henry A. Meyers, Robert R. Sidebotham, and Louis P. Haven be redrafted by A. M. Alderson, and which motion was duly seconded and carried, the redraft reads as follows:

“That, whereas, on the 5th day of July, 1913, the Northwestern Trustee Company, acting by and through its president and secretary, thereunto duly and lawfully authorized, granted to one, D. G. Bertoglio, of Butte, Montana, upon certain terms and conditions therein set out, an option for the purchase of ten thousand shares of the capital stock of the Northwestern Trustee Company and, whereas on account of conditions arising in the management of

the said Northwestern Trustee Company, and certain delays incident thereto, the same being in no way the fault of the said D. G. Bertoglio, which delays make it manifestly necessary for certain changes in the conditions of the said option hereinbefore referred to, and, whereas, the said D. G. Bertoglio has paid the said Northwestern Trustee Company on account of said option, the sum of \$13,965 in cash and notes, and, whereas, there is still due \$136,035, now, therefore, be it resolved that the balance remaining due upon said option shall be paid by the said D. G. Bertoglio as follows, to-wit:

\$5,417.50 on or before October 5, 1914,

6,250.00 on or before April 5, 1915,

6,250.00 on or before October 5, 1915,

9,320.00 on or before April 5, 1916,

18,750.00 on or before October 5, 1916,

18,750.00 on or before April 5, 1917,

71,292.50 on or before October 5, 1917.

Be it further resolved that the said payments hereinabove mentioned shall be made either in cash or notes, executed by subscribers for stock "myself forms" and endorsed by the subscriber, which said notes shall be accepted as payment on the option hereinbefore referred to, in lieu of cash. It is understood and agreed, however, that if default is made in any of the said notes when due, the notes so defaulted upon shall be replaced by the holder of this option, either in cash or notes of other subscribers for stock, and that no stock shall be issued until the actual cash therefor shall have been paid at the price

per share set forth in said option.

With the exception of the changes in the terms of the payment as hereinabove set forth, the option, which is the subject of this resolution, shall remain as originally granted, to the said D. G. Bertoglio.

In accordance with the motion made by William C. Rae, at a meeting of the executive committee, on March 19th, 1914, that the options of D. G. Bertoglio, J. G. G. Wilmot, Henry A. Meyers, Robert R. Sidebotham, and Louis E. Haven be redrafted by A. M. Alderson, and which said motion was duly seconded and carried, the redraft reads as follows:

That, whereas, on the 20th day of May, 1913, the Northwestern Trustee Company, acting by and through its president and secretary thereunto duly and lawfully authorized, granted to one J. G. G. Wilmot, of Great Falls, Montana, upon certain terms and conditions therein set out, an option for the purchase of 10,000 shares of capital stock in the Northwestern Trustee Company, and whereas, on account of conditions arising in connection with the management of the said Trustee Company, and certain delays incident thereto, the same being in no way the fault of the J. G. G. Wilmot, which delays make it manifestly necessary for certain changes in the condition of the said option hereinabove referred to, and whereas, the said J. G. G. Wilmot has paid to the said Northwestern Trustee Company, the sum of \$4,800 in cash, and, whereas, there is still due \$145,200, now, therefore, be it resolved that the



balance remaining due upon said option shall be paid by the said Wilmot as follows to-wit:

\$8,175.00 on or before October 5, 1914.

8,175.00 on or before April 5, 1915.

8,175.00 on or before October 5, 1915.

8,175.00 on or before April 5, 1916,

18,750.00 on or before October 5, 1916.

18,750.00 on or before April 5, 1917.

75,000.00 on or before October 5, 1917.

Be it further resolved that the said payments hereinabove mentioned shall be either made in cash or in notes executed by subscribers for stock, "myself" forms, and endorsed by the subscribers, which said notes shall be accepted as payments on the option hereinabove referred to in lieu of cash. It is understood and agreed, however, that if default is made in any of the said notes when due, that the note so defaulted upon shall be replaced by the holder of this option in cash or notes of other subscribers for stock, and that no stock shall be issued until paid for in cash at the price per share set forth in said option.

With the exception of the changes of terms of the payment as hereinbefore set forth, the option which is the subject of this resolution shall remain as originally granted to the said J. G. G. Wilmot.

In accordance with a motion made by William C. Rae at a meeting of the Executive Committee, March 19, 1914, that the option of D. G. Bertoglio, J. G. G. Wilmot, Henry A. Meyers, Robert R. Sidebotham and Louis E. Haven be redrafted by A. M.



Alderson, and which motion was duly seconded and carried, the redraft reads as follows:

That, whereas, the 3rd day of May, 1913, the Northwestern Trustee Company, acting through its secretary and Henry A. Meyers, director, in lieu of President, thereunto duly and lawfully authorized, granted to one Robert R. Sidebotham, of Great Falls, Montana, upon certain terms and conditions therein set out, an option for the purchase of 2,500 shares capital stock of the Northwestern Trustee Company, and, whereas, on account of conditions arising in connection with the management of said Trustee Company, and certain delays incident thereto the same being in no way the fault of the said Robert R. Sidebotham, which delays make it manifestly necessary for certain changes in the condition of the said option hereinabove referred to, and, whereas, the said Robert R. Sidebotham has paid the Northwestern Trustee Company on account of said option, the sum of \$1,000.00 in notes, and, whereas, there is still due \$24,000.00, now, therefore, be it resolved that the balance remaining due upon said option shall be paid as follows, to-wit:

\$2,125.00 on or before October 5, 1914.

2,125.00 on or before April 5, 1915.

2,125.00 on or before October 5, 1915.

2,125.00 on or before April 5, 1916.

2,125.00 on or before October 5, 1916.

4,250.00 on or before April 5, 1917.

9,125.00 on or before October, 5, 1917.

Be it further resolved that the said payment hereinabove mentioned shall be made either in cash or in notes executed by the subscribers for stock "myself" forms and endorsed by the subscriber, which said note shall be accepted as payment on the option hereinabove referred to, in lieu of cash. It is understood and agreed, however, that if default is made in any of said notes when due, that the note so defaulted upon shall be replaced by the holder of this option either in cash or notes of other subscribers for stock, and that no stock shall be issued until entirely paid for in cash at the price per share set forth in said option.

With the exception of the changes in the terms of the payment as hereinabove set forth, the option, which is the subject of this resolution, shall remain as originally granted unto the said Robert R. Sidebotham.

It was moved by Mr. Alderson, that all stock that has been issued to R. R. Sidebotham as payment as commissions, or on fiscal agency contract, and sold at a price in excess of \$10.00 per share has created a surplus to the Northwestern Trustee Company. Motion duly seconded and carried by unanimous vote.

In accordance with a motion made by William C. Rae at a meeting of the Executive Committee on the 19th day of March, 1914, duly seconded and carried, that Mr. Rae and Alderson select a form to be used for all stock subscriptions hereafter, and note forms, the following forms were adopted and ordered

spread upon the minutes of this meeting, and become effective after this date.

Q. Were you present at that meeting? Do you know?

A. Yes, sir.

MR. WHEELER: The form of note adopted reads as follows:

NORTHWESTERN TRUSTEE COMPANY

Sidebotham and Wilmot, Fiscal Agents.

Capital Stock

\$500,000.00

General Offices lower floor,  
Tod Building,  
Great Falls, Montana.

Subscription

No. 5265. Subscription No. 5265. Subscription  
for.....Capital Stock.....

Name .....

No. of shares.....

Address .....

I,..... hereby  
subscribe to Sidebotham and Wilmot, Fiscal Agents  
.....shares of the capital stock of the  
Northwestern Trustee Company, and agree to pay  
thereon the sum of Agents Twenty Dollars (\$20.00)  
per share, payable as follows:

.....  
As evidenced by certain promissory notes. No. of  
shares..... Stock Certificate to be de-  
livered when final payment is made and I hereby  
agree that should I fail to pay said note when due,

or to make satisfactory arrangements for the payment of the same, that this subscription shall be void at the option of Sidebotham and Wilmot, and that I shall forfeit to Sidebotham and Wilmot any payments made thereof.      No.      shares.

No agent, or person, whomsoever has authority to vary the terms of this contract or has the power to bind the Northwestern Trustee Company, or Sidebotham or Wilmot by any statement or agreement other than herein set forth.

Cash and notes.....

Dated at.....this.....day of.....19....

Agent..... Signed.....

Endorsed in red on face of note "Make all checks and moneys payable to Sidebotham and Wilmot stipulation.

MR. MURPHY: Then follows a note in the same form.

There being no further business to come before the meeting, a motion was made to adjourn which said motion was duly seconded. A vote being taken, the motion was declared carried by unanimous vote.

J. W. SPEER, Secretary pro tem.

ROBERT R. SIDEBOTHAM, Chairman.

MR. MURPHY: The next meeting:

Great Falls, Montana, April 2, 1914.

A meeting of the Executive Committee of the Northwestern Trustee Company was held at the office of the Company in the Tod Building, Great Falls, Montana, on Thursday, April 2, 1914, at 2:30 p. m. Mr. Robert R. Sidebotham, Chairman, presid-

ing. President: Messrs A. M. Alderson, William C. Rae and Robert R. Sidebotham. Absent: Paris Gibson and J. W. Speer.

We, and each of us, hereby consent that a meeting of the Executive Committee of the Northwestern Trustee Company may be held at the offices of the Company in the Tod Building, Great Falls, Montana, on Thursday, April 2, 1914, at 2:30 P. M., and that any and all business may be transacted as fully and to the same extent as if we, and each of us, were present. A M. Alderson, Robert R. Sidebotham, William C. Rae, Paris Gibson, J. W. Speer. The minutes of the last meeting were read and approved.

— — —

Q. Do you know who was selling the stock which had been optioned to Bertoglio?

JUDGE SMITH: That is objected to, as incompetent, irrelevant and immaterial.

THE COURT: Objection overruled.

Exception noted.

A. Yes, sir.

Q. Who was selling the stock?

A. Sidebotham and Wilmot.

They were selling the stock at twenty dollars per share at that time. That would be in April, March or April, 1914. That was twenty dollars a share, March 20, 1914. The stock that had been optioned to Mr. Sidebotham was selling at that time at the same price.

Q. Do you know who was selling the stock under the option of Louis E. Haven at that time?



JUDGE SMITH: Same objection.

THE COURT: Overruled.

JUDGE SMITH: Exception noted.

A. Why, they were selling it, if there was any sold.

JUDGE SMITH: I move to strike the answer out, as not responsive, because it discloses the fact that the witness doesn't know anything about it.

THE COURT: He knows who was assuming to sell it. Whether it was sold or not is another question. The answer may stand. The motion is denied.

JUDGE SMITH: Exception noted.

Plaintiff's Exhibit 8 I have seen before. That is Mr. Black's signature. I am familiar with his signature.

Plaintiff's Exhibit No. 9 I have seen before, in the offices of the company.

Plaintiff's Exhibit No. 10 I have seen before.

Exhibits 8, 9 and 10 are the original contract, and part of the files of the office of the Northwestern Trustees Company.

MR. WHEELER: We now offer in evidence Plaintiff's Exhibits 8, 9 and 10. I will now read Plaintiff's Exhibit 9:

#### NORTHWESTERN TRUSTEE COMPANY.

Founders of the Trustee Unit System of Ownership for the development of Real Estate in the State of Montana.

Capital Stock, \$500,000.00.

Incorporated under the laws of the State of Montana.

General Offices, Ground Floor, First National Bank Bldg., 7½ South Third Street, Great Falls, Montana.

**SUBSCRIPTION FOR CAPITAL STOCK.**

Book No. B 102.

No. of Shares, 34.

Subscription No. 129.      \$510.00 .....

We, McRae & Cluston, .....  
do hereby subscribe to the NORTHWESTERN  
TRUSTEE COMPANY, for .....  
shares of the capital stock of the company and  
agreed to pay therefor the sum of Fifteen Dollars  
(\$15.00) per share, payable as follows in work and  
The Company will pay 50% on such mill work and  
50% stock as evidenced by certain promissory notes.  
No cash payment will be required.

It is expressly understood that the par value of  
this stock is Ten Dollars (\$10.00) per share. The  
selling price is Fifteen Dollars (\$15.00) per share,  
thereby creating a surplus fund. The idea of the  
surplus being to have the company start on a par  
with other large investment corporations and bank-  
ing institutions.

When Three Hundred Thousand Dollars' (\$300,-  
000.00) worth of the capital stock has been sold, a  
call will be issued and the stockholders will assemble  
at Great Falls, Montana, and at that time elect a  
permanent Board of Directors and perfect a per-  
manent organization, stock certificates to be deliv-  
ered when final payment is made, and I hereby

agree that should I fail to pay said notes when due or to make satisfactory arrangements for the payment of the same, that this subscription shall be void at the option of the Northwestern Trustee Company and that I shall forfeit to the Northwestern Trustee Company any payments made thereof.

No agent has authority to vary the terms of this contract or has the power to bind the company by any agreement other than herein set forth.

Dated at Great Falls this 16th day of June, 1913.  
Agent Sidebotham & Wilmot.

Signed McRAE & CLUSTON,  
W. Cluston.

\$510 .....

Great Falls, Montana, June 16, 1913.

Three Hundred Sixty-five days after date, for value received, the undersigned promises to pay to the Northwestern Trustee Company, or order, Five Hundred Ten Dollars, payable according to Subscription of this date. Payable at the General Offices of the Northwestern Trustee Company at Great Falls, Montana, with interest at the rate of eight per cent (8%) per annum until paid; together with reasonable attorney's fees in case suit is instituted on note, or if note, or any part thereof, is collected by an attorney. The makers, endorsers and guarantors severally waive presentment for payment, notice of non-payment, protest and notice of protest on this note.

No.....129..... McRae & Cluston.....

Due..... W. Cluston.....

Address.....

(Treasury Subscription)

Q. I will ask you, Mr. Atkinson, if you know whether or not that was included as part of the assets in the circular authorizing it, September 16, 1913, which states that the company had some Five Hundred and Eighty-Five Thousand Dollars in assets?

A. Yes, sir.

JUDGE SMITH: If that is the purport of that question and answer, I desire to have an opportunity to object to it, or have an understanding that it comes under my last objection.

THE COURT: Yes. The objection will be overruled.

JUDGE SMITH: Note an exception.

THE COURT: It may be noted.

Exhibit 8 is in words and figures as follows, to-wit:

\$1,005.00.....

Great Falls, Montana, May 29.

One hundred and twenty days after date, for value received, the undersigned promises to pay to the NORTHWESTERN TRUSTEE COMPANY, or order, (\$1,005.00) One Thousand and Five Dollars, payable at the General Offices of the NORTHWESTERN TRUSTEE COMPANY at Great Falls, Montana, with interest at the rate of eight per cent (8%) per annum until paid; together with reasonable attorney's fees in case suit is instituted on note, or if note or any part thereof, is collected

by an attorney. The makers, endorsers and guarantors severally waive presentment for payment, notice of non-payment, protest and notice of protest on this note.

No. 152.

H. N. BLACK.

Due.....

Address .....

### TREASURY SUBSCRIPTION.

#### *NORTHWESTERN TRUSTEE COMPANY.*

Founders of the Trustee unit system of ownership for the development of Real Estate in the State of Montana.

CAPITAL STOCK, \$500,000.00.

Incorporated under the Laws of the State of Montana. General Offices, Ground Floor, First National Bank Bldg., 7½ South Third Street, Great Falls, Montana.

#### SUBSCRIPTION FOR CAPITAL STOCK.

Book No. B. 105.

No. of Shares, 67.

Subscription No. 152.

\$1,005.00.

I, ....., do hereby subscribe to NORTHWESTERN TRUSTEE COMPANY, for Sixty-seven shares of the capital stock of the company and agree to pay therefore the sum of FIFTEEN DOLLARS (\$15.00) per share, payable as follows in ..... as evidenced by certain promisory notes.

It is expressly understood that the par value of this stock is Ten Dollars (\$10.00) per share. The



selling price is Fifteen Dollars (\$15.00) per share, thereby creating a surplus fund. The idea of the surplus being to have the company start its business with a capital and surplus, thereby placing the company on a par with other large investment corporations and banking institutions.

When Three Hundred Thousand Dollars (\$300,000.00) worth of the capital stock has been sold, a call will be issued and the stockholders will assemble at Great Falls, Montana, and at that time elect a permanent Board of Directors and perfect a permanent organization, stock certificates to be delivered when final payment is made, and I hereby agree that should I fail to pay said notes when due or to make satisfactory arrangements for the payment of the same, that this subscription shall be void at the option of the Northwestern Trustee Company and that I shall forfeit to the Northwestern Trustee Company any payments made thereof.

No agent has authority to vary the terms of this contract or has the power to bind the company by any agreement other than herein set forth.

Dated at Great Falls this 29th day of May, 1913.

Agent, R. R. SIDEBOTHAM.

(Signed) H. N. BLACK.

This note payable in architect work.

Plaintiff's Exhibit 10 was then introduced in evidence and is identical in form and substance with that part of plaintiff's Exhibit 8, designated as Subscription for Capital Stock, except that it is a subscription by Edwin L. Norris on

date of June 10, 1913, for 34 shares amounting to \$510, and being subscription No. 206, Book No. B. 110. After the words "payable as follows" there is written as "understood by and between the President and me."

(Here insert plaintiff's Exhibit 16.)

Q. I will ask you to examine Plaintiff's Exhibits 11, 15, 13, 12, 14.

A. I have seen them before. They are the original contract and option and note, and a part of the official file of the Northwestern Trustee Company.

MR. WHEELER: We now offer in evidence Plaintiff's Exhibits 13, 12, 14, 11 and 15.

THE COURT: Are these like those you have already read?

MR. WHEELER: They are all exactly on the same line.

JUDGE SMITH: Before Your Honor rules, not knowing the purpose of these offers, the client whom I represent objects to Exhibit No. 11, Exhibit 12, 13, 15 and 16, as incompetent, irrelevant and immaterial.

THE COURT: The objection is overruled. This evidence is admissible as to some of these, that is, assuming that it will be carried forward and properly connected.

Exception noted.

Q. What was the financial condition of McConahy and Atkinson, do you know?

JUDGE SMITH: I ask that the witness be admonished to answer that question "yes" or "no."

THE COURT: Yes, he may.

A. No, sir, I don't know exactly.

Q. I will ask you, under this option, if you know who it was that paid the first \$250.00 that was paid upon the option?

A. I turned the money over to Mr. Wilmot.

Q. Where did you get the money from?

A. The money was sent to me by McConahey.

None of this money was the money of Miss Cort. J. J. Ives, who signed the note for \$4,800.00, Plaintiff's Exhibit 15, was one of the agents of the company, selling stock at that time. I do not know what his financial condition was at the time. He was a stock salesman. W. H. Ruso, he was another agent of the company.

Plaintiff's Exhibit 11 was then introduced in evidence and is the same in form and substance with plaintiff's Exhibit 8 on page 171 except that it is an application on the part of Ralph R. Reed for 100 shares for \$1,500 and being subscription No. 127, Book No. B. 102 and dated July 23. This was signed by Sidebotham & Wilmot, agent. There are attached to the subscription for capital stock 5 promissory notes all dated July 23, 1913, three of which are in the sum of \$300, each payable to the Northwestern Trustee Company, one of which is payable 160 days after date, one 250 days after date and the other 340 days after date. The other two are each in the sum of \$150 and payable to myself or order, one being 30 days after date and the other 60 days after date. Both of these last two

were endorsed in blank by Ralph R. Reed. There does not appear on any of these notes as on Exhibit 8 the statement that this note is payable in architect work.

Plaintiff's Exhibit 12 was then introduced in evidence and is identical in form and substance with the note constituting a part of Exhibit 8 on page ~~171~~<sup>172</sup>, except that it is signed by W. H. Reansaw and dated August 16, 1913, in the sum of \$2,400, payable 365 days after date and bearing number 299. There does not appear on this note the statement that this note is payable in architect work.

Plaintiff's Exhibit 13 was then introduced in evidence and is identical in form and substance with that part of Exhibit 8 on page ~~172~~<sup>172</sup>, designated as Subscription for Capital Stock, except that it is signed by W. H. Reansaw for 200 shares of stock of \$3,000, being subscription No. 299, Book No. B. 119, signed by Sidebotham & Wilmot, agent, dated August 16, 1913. There appears on the face thereof that \$100 is payable in 30 days, \$100 in 60 days, \$100 in 90 days, \$100 in 120 days, \$100 in 150 days, \$100 in 180 days, balance \$2,400 within one year. Ten shares will be delivered at any time when \$150 is paid.

Plaintiff's Exhibit 14 was then introduced in evidence and is identical in form and substance with Exhibit 8, except that it is signed by William M. Duncan, for 100 shares at \$1,500, dated August 16, 1913, the note being for \$1,200, payable



in one year. Written on the face of the subscription is the following: \$50 in 30 days, \$50 in 60 days, \$50 in 90 days, \$50 in 120 days, \$50 in 150 days, \$50 in 180 days, balance within one year. Upon the payment in full on 10 shares or \$150 at any time the company will issue to you 10 shares.

(Signed, Agent) SIDEBOTHAM & WILMOT.

Plaintiff's Exhibit 15 was then introduced in evidence and is identical in form and substance with Exhibit 8 on page ~~121~~ except that it is signed by John J. Ives for 400 shares at \$6,000, dated August 16, 1913. The note is in the sum of \$4,800, made payable a year and six months after date and the note is made payable to myself, or order, and endorsed in blank by John J. Ives. Written across on the face of the subscription is the following: Note \$300 due November 16, 1913; note \$300 due February 16, 1914; note \$300 due May 16, 1914; note \$300 due September 16, 1914; \$4,800 note due February 16, 1915. Stock to be issued in blocks of 10 shares or any multiple thereof at any time upon payment of amount of stock asked for by me a pro rata credit of  $12\frac{1}{2}$  per cent shall be allowed subscriber on all notes at the time payments are made, also a pro rata credit for payments, and attached thereto is the following:

#### OPTION.

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned, for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable considerations to it in hand paid by J. J.



Ives of Seattle, Washington, the receipt of which is hereby acknowledged, hereby gives and grants to the said J. J. Ives an option of Five Hundred (500) shares of stock of the Northwestern Trustee Company, at a price of Fifteen Dollars (\$15.00) a share, the stock to be placed in escrow with the Treasurer of the Northwestern Trustee Company and to be paid for and delivered upon the following terms and conditions, to-wit: Five Hundred Dollars (\$500.00) cash, upon the signing of this option; Five Hundred Dollars (\$500.00) to be paid on or before September 16, 1913; Five Hundred Dollars. (\$500.00) on or before October 16, 1913; Five Hundred Dollars.

(\$500.00) on or before November 16, 1913; Five Hundred Dollars.

(\$500.00) on or before December 16, 1913; Five Hundred Dollars.

(\$500.00) on or before January 16, 1914; Five Hundred Dollars.

(\$500.00) on or before February 16, 1914; Five Hundred Dollars.

(\$500.00) on or before March 16, 1914; Five Hundred Dollars.

(\$500.00) on or before April 16, 1914; Five Hundred Dollars.

(\$500.00) on or before May 16, 1914; Five Hundred Dollars.

(\$500.00) on or before June 16, 1914; Five Hundred Dollars.

(\$500.00) on or before July 16, 1914; One Thousand Five Hundred Dollars; (\$1,500.00) on or before August 16, 1914.

Upon the payment of the Five Hundred Dollars (\$500.00) on or before September 16, 1913, the undersigned agrees to issue to the said J. J. Ives, or his assigns, sixty-six (66) shares; and upon the payment of Five Hundred Dollars (\$500) or any multiple thereof, at any time after the payment of the Five Hundred Dollars (\$500.00) above referred to, due September 16, 1913, and not exceeding the sum of Six Thousand Five Hundred Dollars (\$6,500.00), the undersigned agrees to issue stock to the said J.

J. Ives at the rate of Fifteen Dollars (\$15.00) per share for the amounts so paid by the said J. J. Ives, providing the terms of this option are fully complied with at the time of the said demand for stock and tender of the money by the said J. J. Ives.

Time shall be of the essence of this option.

NORTHWESTERN TRUSTEE COMPANY.

Dated at Great Falls, Montana, August 16, 1913.

.....,  
President.

.....,  
Assistant Secretary.

I hereby accept the terms and conditions specified in the foregoing option.

Witnesses:

.....  
.....

W. M. Duncan was another soliciting agent of the company. Ralph Reed, in Plaintiff's Exhibit 11, was a soliciting agent of the company. These notes, Plaintiff's Exhibit 14, note for \$1,200.00; Plaintiff's Exhibit 13, note for \$1,500.00; Plaintiff's Exhibit 14, a note for \$1,200.00; Plaintiff's Exhibit 16, note for \$11,600.00, and Plaintiff's Exhibit 13, subscription for \$3,000.00 worth of stock; Plaintiff's Exhibit 15, \$4,800.00, I don't were all included as being the assets of the company in the circular authorized by the Executive Board on September 16, wherein it is stated that the assets that the company now has are over \$585,000.00 in notes and cash. I don't think these were all included in that \$585,000.00, because some of that was held by Sidebotham and Wilmot as their commission. I cannot tell you which ones were held by Sidebotham and Wilmot as their commission, without going through the books. They held by Sidebotham and Wilmot, for instance, the Ruso subscription, \$3,000.00. Part of the notes in that case were held by Sidebotham and Wilmot as their commission so that the full note for \$3,000.00 would not be in the assets of the company. The difference between the commissions which were allowed to Sidebotham and Wilmot on the note, and the balance, would be carried on the books of the company. The portions belonging to the company would be carried on the books of the company, and they would retain their commissions. In some cases, however, the notes didn't figure exactly even, so

that the company was carrying more than they really were entitled to. The company did carry more than they were really entitled to. But a portion of all these notes, at least, and options were included in the circular authorized September 16, 1913. A portion of each one of these was included. Sidebotham and Wilmot received a part of the note as a commission upon all of these options and subscriptions that were taken up by the agents of the company. The \$250 cash that was paid upon my subscription was paid to Sidebotham and Wilmot, and there was something like close to \$1,200.00 in notes went into the company; I don't know the exact amount without looking it up. None of the cash went to the company.

In accordance with a motion made by William Rae at a meeting of the Executive Committee March 19, 1914, that the options given to Bertoglio, Sidebotham, Wilmot, be redrafted by A. M. Alderson, and which motion was duly seconded and carried, the redraft reads as follows: That, whereas, on the 5th day of July, .....

THE COURT: Hasn't that all been read?

MR. WHEELER: They are in the same form, Your Honor, but this is as to the Haven and Meyer options; the other one referred to the Bertoglio, Sidebotham and Wilmot .....

MR. KELLY: We can save time by agreeing that the options were changed to conform to the options that have been read, and are of the same purport.

MR. WHEELER: Yes, excepting as to the amount, and with the exception of the changes of terms of the payment as herein set forth. (Reading further from minutes.)

(Here see minutes of directors, found on pages

At a meeting of the Executive Committee of the Board of Directors of the Northwestern Trustee Company, held in the City of Helena on the first day of October, 1914, there were present Robert R. Sidebotham, William C. Rac and A. M. Alderson. The following business was transacted:

It was moved by Mr. Sidebotham and seconded by Mr. Rac that certificates of deposit upon reputable banks of Montana be purchased from Sidebotham and Wilmot by the Northwestern Trustee Company, at a price not to exceed ninety-six per cent (96 %) of the face, in the event that said certificates of deposit are for a term of six months or less; in the event the said certificates of deposit are for a period of one year, the price to be paid shall not exceed ninety-two per cent (92%) of the face; the total amount of money expended by the Company in the purchase of such certificates of deposit shall not exceed Three Thousand Dollars (\$3,000.00).

There being no further business, the meeting was adjourned.

A. M. ALDERSON,

President.

ROBERT R. SIDEBOTHAM,

Vice-President.



WM. C. RAE,

Secretary-Treasurer.

Members Executive Committee.

I hereby consent that a meeting of the Executive Committee of the Northwestern Trustee Company may be held on October 1st, and that any and all business of the Company may be transacted during my absence as fully and to the same extent as if I were present.

J. W. SPEER.

Plaintiff's exhibit 18 is in words and figures as follows:

NORTHWESTERN TRUSTEE COMPANY.

(Incorporated.)

Authorized Capital Stock and Surplus Over  
\$500,000.00.

Home Office,

Great Falls, Montana.

Branch Offices in Principal Cities and Towns in  
Montana.

Bond, Mortgage and Investment Securities.

HON. A. M. ALDERSON, President.

ROBT. R. SIDEBOTHAM, Vice President.

WM. C. RAE, Secretary and Treasurer.

M. A. CORT, Asst. Secretary and Treasurer.

J. W. SPEER, Director.

A. M. ALDERSON, Director.

J. G. G. WILMOT, Director.

W. R. ALLEN, Director.

WM. C. RAE, Director.

ROBT. R. SIDEBOTHAM, Director.

D. G. BERTOGLIO, Director.

Great Falls, Montana, August 11, 1915.

To the Board of Directors,

Northwestern Trustee Company,

Great Falls, Montana.

Gentlemen:

Having subscribed to 500 shares of stock in the Northwestern Trustee Company at the time of organization when the stock was selling at \$10 per share and giving my note for payment of the same with the intention, at that time, of disposing of a part or all of it as I deemed best, and not having sold the stock up to the time I was elected President of the Company, after which time I deemed it to be unjustifiable for an Officer of the Company to profit by the raise in the stock, I, herewith, tender to the Company my original subscription of 500 shares with the understanding that my note and all obligations in connection with the same be cancelled.

The policy I have maintained throughout is to increase the efficiency of the stock at every opportunity and would recommend to this Board of Directors the cancellation of all stock sold at \$10 per share. In this way the efficiency of each share of stock will be thereby increased.

Thanking you for due consideration of the above,  
I am

Yours very truly,

A. M. ALDERSON.

On Plaintiff's Exhibit 18, the signature that is at the bottom of the letter is Mr. Alderson's signature.

Q. (By MR. WHEELER): Mr. Atkinson, let me ask you if at any time while you were book-keeper and secretary or assistant secretary of the company, the company was paying expenses?

JUDGE SMITH: That is objected to, as not the best evidence.

THE COURT: I don't know whether it is or not. The objection will be overruled.

Exception noted.

A. It was not making money sufficient to pay its running expenses.

Q. And what have you to say as to whether or not from time to time, or at any time, these various agents had access to the company, or these two agents Tobin and Rainwater had access to the books of the company?

MR. KELLY: Objected to, as immaterial.

THE COURT: If alone, it might be, but we will assume that it will be followed up. The objection will be overruled.

Exception noted.

A. Yes, they saw the books a number of times. They discussed with me these outstanding options. Mr. White did also.

Q. Was anything said to them by you, or in your presence, and in the presence, of course, of Rainwater, White and Tobin, with reference to Sidebotham having an option on some of the stock, Bertoglio having an option on some of the stock, and the price at which the options were granted by the company?

A. That was discussed, and they each one knew the options that were outstanding, and the price.

I myself requested pictures of Mr. Rae.

Q. What have you to say whether or not subsequent to the time that you requested his picture, of Mr. Rae, the company had in its possession one of his pictures?

MR. GALEN: We object to that, as irrelevant and incompetent.

THE COURT: Overruled.

MR. GALEN: Note our exception.

A. I cannot answer that by yes or no.

Q. When was it, if at all, that you sent for one of his pictures?

A. It was right after the stockholders' meeting in August, 1913.

Q. And at whose suggestion did you send for it?

A. At the suggestion of Mr. Sidebotham.

Q. And what, if anything, was said by you to Mr. Rae as to why you wanted his picture?

MR. KELLY: Objected to, as immaterial.

THE COURT: Overruled.

MR. KELLY: Note our exception.

A. To publish the picture in the paper that they were getting out of all the officers.

Q. And the circulars?

A. In a circular paper that was being gotten out. I mailed out some circulars of the company.

Q. What have you to say as to whether or not you mailed out any of the circulars of the company to Messrs. Alderson and Rae, Bertoglio, Speer and

the rest of the defendants in this case?

A. I mailed some to some of them probably, but to all, I don't remember mailing any to Mr. Speer.

Q. Did you mail any to Mr. Alderson and Mr. Rae?

A. I think I did.

Exhibit 19 I have seen before. That is a carbon copy of an original telegram. I did the writing of the telegram, at the suggestion of Mr. Sidebotham.

Plaintiff's Exhibit 21 I have seen before, in the office of the company. I wrote that letter upon the typewriter, at the suggestion of Mr. Sidebotham. I signed the Northwestern Trustee Company's name on the machine. It was either signed by the president, or signed his name himself. That is a carbon copy of the original letter.

MR. WHEELER: We now offer in evidence Plaintiff's Exhibit 21.

Said Exhibit 21 is as follows:

(Here insert Ex. 21.)

Exhibit 22, dated August 18, 1913, I have seen one of those. Sidebotham and Wilmot authorized them, while I was with the Northwestern Trustee Company.

#### Cross-Examination.

By MR. GALEN: I reside close to Chouteau. Have resided in the State of Montana since July, 1913. My family at present is close to Chouteau. I am living with my family. Prior to coming to the State of Montana I was engaged in the real estate business in Colorado and Missouri. When I first



came to Montana my first employment was with the Northwestern Trustee Company. I first became connected with the Northwestern Trustee Company shortly after the first of July, 1913, I think on the 6th; I wouldn't be sure now. I continued with that company until the following April. That would be April, 1914; and after that I did a little work for them, as the payments were coming in, until Miss Cort took the office. With reference to the date of my employment with the Northwestern Trustee Company, I took out a stock certificate for my wife, well, it was in August that the subscription was taken out, it would be about a month and a half afterwards. I was at that time partly familiar with the company's business methods and operations. I am familiar with its books. At the time that the stock subscription was taken out, I was Assistant Secretary. At that time I had full knowledge of the business affairs of the corporation. The records, which are in evidence, show that Mr. Rae, although elected as director of the company in 1913, he never qualified. He was elected, but he did not qualify as director at that time. I don't know whether he sent his resignation, or whether, owing to the fact that he didn't qualify, his successor was elected. At any rate, he never attended the meetings of the board of directors until 1914. I don't remember his sending his picture at that time. I don't know, as a matter of fact, that he didn't send his picture to me in reply to either the telegram now in evidence or the letter

which I identified as having been written for the company. I know he didn't at that time, for quite a little while after that. Mr. Rae did not prior to March, 1914, nor did Mr. Alderson prior to March, 1914, even attend any meetings of the stockholders or directors of this company.

I stated that Mr. Rae directed me to get a rubber stamp, fac-simile of his signature, made, after March, 1914; and I have also testified that the purpose of his so ordering the making of such stamp was that I should use the same in the issuance of receipts for the payment of moneys made to the company. It was to be used for that purpose.

Q. But the stamp had, in fact, never been delivered to you, nor to the company prior to the time that you discontinued your connection?

A. I don't remember ever seeing it done; I don't remember seeing it until after that.

Q. Then you never yourself used the stamp?

A. No, sir, I did not.

Q. When were the company's books first delivered to Mr. Rae?

A. I can give the exact date by referring to the minutes. It was either some time in March or April, 1914.

Q. And prior to that, although you were the bookkeeper of the company, first, and subsequently acted in the capacity of assistant secretary, Mr. Rae, to your knowledge, had never examined those books, had he?

A. Not prior to March, 1914.

I had the Alderson note in my custody. There was no Rae note. I have testified that that Rae subscription was for \$2,500.00. My recollection is there was an endorsement of some kind on it. The nature of the endorsement was, payable at the option of the maker thereof, or words to that effect. It was either one or two notes aggregating Five Thousand Dollars. There was a subscription to my knowledge in that connection, an accompanying subscription. There was nothing peculiar about either the subscription or notes.

Q. To refresh your memory, and to expedite matters, Mr. Atkinson, isn't it a fact that in the early part of March, 1914, there was a deadlock in the Board of Directors at that time, and the Board of Directors refused to meet in consequence thereof; there was an arbitration committee appointed for the purpose of readjusting the board, and electing a new membership thereof?

A. Yes, sir.

That arbitration commission consisted of Mr. Speer, Mr. Worden and Mr. Thomas Couch. At that time, early in March, there was a difference between the officers, as well as the members of the directorate. The officers were directors. There was a difference. March 2nd, 1914, the board was a thirteen-member board. Early in March, 1914, the Board, who were in attendance at Great Falls, were equally divided in number, the odd-numbered man being Ed. Broadwater, of Havre, to attend the meeting and break the deadlock. It was just about

evenly divided at that time. And at that time, March 3rd or 4th, 1914, an equal number of the Board of Directors were in one room in the First National Bank, and the other equal number were in Mr. Spear's room in the First National Bank Building, and they were refusing to meet or get together, or do anything pertaining to the business affairs of the company. There was a deadlock, that was the case. And at that time, Governor Edwin L. Norris was attorney for the company. I recall your being there in 1914. I recall telling you on that occasion, about March 3rd or 4th, the amount of cash assets in the bank of the corporation. No, I showed you the book, Mr. Galen, showed you the amount on the book. I know it was not \$50,000.00. My recollection is about \$20,000.00 or \$25,000.00 in cash.

Q. Will you refer to the books of account which show the account which you were then keeping, and tell the jury the cash assets on hand March 1, 1914?

A. I don't see the books here.

Q. Will you pick out the particular ledger?

A. Well, the check book would give that.

Q. Will you pick out the book?

A. I cannot pick it out. The books are here.

I did not tell you on that occasion in Spear's office approximately the 3rd or 4th day of March, 1914, that the cash in bank to be preserved for its stockholders was in the neighborhood of \$50,000.00. I don't remember meeting you in Spear's office. You were down in the company's office, in the First



National Bank Building. You had Mr. Spear's office confused with the company's office. The company's office was in the same building, different floors.

As the result of the arbitration agreement, Messrs. Rae and Alderson and Spear were made directors of the company. I believe it was in March, 1914. I stated that Messrs. Alderson and Rae visited the office of the Northwestern Trustee Company prior to the time that they were elected officers and directors. That was during the attempt of getting the board together. That was about the time the board was appointed, just before they made their report, or possibly two or three days before, a very short time.

Regarding the testimony that I would give in this case I have talked with Mr. Wheeler and Mr. Paisley. The first time I talked with Mr. Paisley was the time of the session of the grand jury here. I had not prior to that talked to any representative of the United States government concerning this proposed case. I was subpoenaed several days before I met either one. I was a witness before a grand jury. I had talked, before I was called as a witness before the grand jury, to Mr. Paisley and Mr. Wheeler, during the meeting of the grand jury. They subpoenaed me before I saw either one of them. I did not become antagonistic to the company and its officers in consequence of my discharge from employment in April, 1914.

I was first interviewed by an officer of the gov-



ernment concerning my knowledge of the affairs of this company about the 3rd or possibly 4th day after the grand jury met here. Prior to that time I had never spoken to Mr. Wheeler, or to the officer or representative of the government concerning my knowledge of the business or affairs of the Northwestern Trustee Company. Prior to that time I had not known Mr. Wheeler. I had not known or met any of the representatives of the government, postal officers, or others. The first I had was a letter from Mr. Paisley. I don't remember the exact date. It was about the time that the warrant was issued by the Commissioner, and the newspapers gave the account of Mr. Sidebotham being arrested. I had no feeling at the time, or had entertained any feeling of animosity towards any officer of the company, defendants in this case.

I do not know from the books or from my own knowledge of the affairs of the company what the commission paid by this company was for the sale of its capital stock. This company, the Northwestern Trustee Company, is still engaged in business, I understand.

Q. You may tell the jury if you know whether or not the Northwestern Trustee Company actually commenced its loan department before you severed your connection with the company.

A. There were a number of blanks drawn, and two contracts, I believe, were gotten.

They purchased two pieces of property for the purpose of construction of an apartment house

while I was with the company. They had plans for the construction of that apartment house drawn. They engaged Mr. Black as the architect, and he drew the plans. They also went to the extent of making arrangements with Cleuston & McRae for the construction of that apartment house. I wouldn't say for the entire construction. I know that they talked to them with reference to a part of it, at least, the part that would be in their line of work. Governor Norris was the attorney for the company.

There were a number of circular letters in reference to the company that were mailed out as the interest notices were mailed. There must have been five hundred sent out, or a thousand altogether; different circulars were being sent. I was simply sending out interest notices, and as I would, I would put one or two in the envelope. I know that I sent some circulars to Alderson and Rae. By sending interest notices, I am satisfied that I skipped none of them. There was no interest notice coming to Rae. I couldn't say if I did send him any circular, unless sent in another letter. I cannot tell positively that I did send any such circulars either to Mr. Alderson or to Mr. Rae. I wouldn't pick out any particular instance and say that I did. The general course of business was to send them out. We sent them as we sent the interest letter. I was not in the office when that was written, Plaintiff's Exhibits No. 18, No. 12. I did not do the typewriting of this letter, Exhibit 18.

Now, Plaintiff's Exhibit No. 21 was a letter which I identified as having been written to Mr. Rae. I wrote that letter at the instigation of Mr. Sidebotham. It was either directly or indirectly. I know the instructions were to get the photographs of the different parties who had been elected officers. As Assistant Secretary, letters of that sort I prepared myself, as to the phraseology, most of them. This Exhibit 21 correctly stated the facts.

Q. As a matter of fact, isn't it true that Mr. Rae and Mr. Alderson didn't come to Great Falls, nor appear at the office of the Northwestern Trustee Company until after the arbitration board had agreed upon their election as directors and sent word to them that they had been elected?

A. I don't know what date they agreed to on the election, or whether they sent them word or not. I know they were there when the final meeting was held, at which the report was made. But their selection may have been made by that board of arbitration prior to their coming to Great Falls. It may have been made before that. I don't know what date they made their selection.

#### Cross-Examination.

By JUDGE SMITH: I ceased to be bookkeeper and became Assistant Secretary the 13th of August, 1913. When I first went there I believe Mr. Sidebotham himself was the fiscal agent, the first few days I was there, and then change was made afterwards to Sidebotham and Wilmot. Mr. Sidebotham told me that the object of raising the selling price

of stock was to create a surplus. That was the talk at the directors' meeting. I did not hear all the directors discuss that proposition, because some of the directors had never met. Mr. Sidebotham advanced that as a reason for changing the selling price. He mentioned that in the stockholders' meeting, in the little talk that he made. That was one of the reasons given by Mr. Ives when he made the motion. I believe he is the one who made the motion to raise the price from \$15.00 to \$20.00, and the motion carried. That was when they raised the stock from \$15.00 to \$20.00. That was at a stockholders' meeting. The stockholders were the ones who raised the price from \$15.00 to \$20.00. Regular notices were sent out to all the stockholders. No effort was made on my part to withhold information from the stockholders that such a meeting was to be held. The meeting was advertised and notices were sent out so that the stockholders could be reached by mail. Advertised in one or two of the papers in the Falls. This newspaper advertisement contained notice of the purpose for which the meeting was to be called. It was to raise the selling price of the stock. My recollection is that that was stated in the notice. Well, that was one of the purposes, that and to elect officers. These letters that I sent out, notifying the stockholders that the meeting would be held, I think they contained a notice that one of the purposes of the meeting was to raise the price of the stock. I don't know whether they are here or not. There were carbon copies left in



the files by me. It was my purpose in notifying the stockholders, of exactly what would be considered at that meeting, so that there would be no question about it. If that was one of the purposes that was inserted in the call for the meeting, that purpose appears in the notices sent out to the stockholders, undoubtedly.

I did have a purpose to buy some of this stock for myself, somewhat. The subscription is in the name of my wife. I negotiated for the subscription of that stock, acting as her agent. I would naturally be interested in it, as the husband of my wife, getting a benefit from it, from selling part of the stock, and part of the benefit from an advance in it. I don't know what you would term it, whether a silent partner with my wife, acting as trustee. The rake-off would be the difference between Fifteen and Twenty Dollars, that belonged to McConahay and May Atkinson. McConahay and Atkinson got a subscription of a thousand shares of stock at Fifteen dollars a share. I negotiated that on the part of McConahay and Atkinson. McConahay lives in Great Falls now, and works for the express company. The same party in August, 1913, lived at Haegler, Nebraska. Here is a notice signed McConahay and Atkinson, per May Atkinson. May Atkinson is my wife. She actually signed that. I saw her. McConahay and Atkinson were not a partnership exactly. It had no interest down at Haegler, Nebraska; no, sir. You might call McConahay



and Atkinson a limited partnership for this purpose.

Q. Whom did you negotiate with, Sidebotham or Wilmot, or whom, for this subscription?

A. Well, we talked it over, three of us sometimes; sometimes just two of us.

This \$250 in cash was sent up from Nebraska by McConahay. The result was that I finally got this subscription. I don't remember the number. I think the notes were executed to home. The subscription to Sidebotham and Wilmot was transferred to them. I did not offer to sell it to others first. I didn't think any outsider had anything to do with it. I thought Mr. Miller was sent to me by somebody else. I didn't have any dealings with him, anyway. I didn't try to sell my stock to C. A. Rainwater or to W. W. White. I asked for it, when I first opened up the matter of selling it, I think it was Five Hundred Dollars. I considered that that subscription contract was sort of an asset. It was something that I figured on making some money out of. When they took over my subscription that was done in writing. If you will let me see the contract, I can give you shortly the terms of it. I think it was fifty cents a share, as the stock was sold. There was some change made in it afterwards, I believe. The stock was selling, when I made this contract with Sidebotham and Wilmot, at Twenty or Thirty Dollars; I wouldn't say as to which now. I wasn't there when the money was paid in, I don't know. Paid to my wife, the final

payment was. I don't know what they paid. I did not thoroughly understand that when I sold this subscription as a part of the bargain, that McConahay and Atkinson should not be relieved from responsibility on their promissory note.

I said on direct examination that I wanted to sell the stock for Twenty Dollars, and make the extra five.

Q. Probably acting, were you acting for yourself or as agent for your wife, when you wanted to make that extra five?

A. Well, it would all be in the family, anyway.

I personally listed the McConahay and Atkinson note as an asset of the company, as assistant secretary or treasurer. Part of them were included in the amounts that were mentioned. That was done in my capacity as assistant treasurer.

Q. I read you, necessarily a copy, because I haven't the original, but I think we can assure counsel that we made a correct copy of the minutes of the executive committee; I read you what purports to be in the executive minutes an assignment of the McConahay and Atkinson contract.

MR. WHEELER: Give us the date.

JUDGE SMITH: April 20th, 1914. It purports to be an assignment by McConahay and Atkinson, per May Atkinson, to Sidebotham and Wilmot, and right below it in the minutes I find this: We hereby accept the above assignment, Sidebotham and Wilmot, per Robert R. Sidebotham, it is thoroughly understood that the subscription is assigned and

that Sidebotham and Wilmot are not obligated to meet the notes of McConahay and Atkinson, but that any payments made to the company on the stock, shall go towards liquidating the amount so due on the note. Do you remember that transaction?

A. I remember there was a transaction something like that.

Q. Do you find such a notation as I read to you there in the original minutes there, Mr. Atkinson?

A. No, sir, I don't yet, Mr. Smith.

Q. Do you recall making an affidavit as to the financial standing of the company, which showed \$580,000 in options, contracts, notes, cash and mortgages?

A. There was an affidavit, yes, sir. I made it. I swore to it in the regular way. There was one affidavit made before Mr. Dudley Crowther, as a notary. I swore to one before him. I don't know what you have reference to.

This Mr. Schearer that I spoke of yesterday lives in Great Falls, at least did when I knew him, probably a year and a half ago. I don't know anything about him since then.

At the page that Mr. Kelly indicated to me I find an original notation to the same effect that you read a little while ago. I find a notation of that kind in the minutes, but it is below the signature of Sidebotham and Wilmot. It is simply in the minute book, it was not on the original contract. These minutes though were after the eleventh of April.

I talked about this case to Mr. Wheeler and Mr. Paisley. When I talked to Mr. Paisley he did not show me a copy of the Spokane Chronicle, in which it is declared that the Spokane Postoffice Inspectors had unearthed this gigantic fraud. I talked to him before the indictment was found, possibly three or four days, just a few days before, at least with Mr. Paisley, who I understand is a Postal Inspector.

Mr. E. H. Cooney lives in Great Falls, is the editor of the Leader, and former postmaster, a stockholder in the Northwestern Trustee Company, and one time a director.

This Calder subscription was returned because he was to have work on some building to be erected, and that up to that time had not been erected. Well, he was willing, he was in the office a number of times. It was Sidebotham himself who made the motion to have him get his note back. When a subscription was made the stock was written up and held then by the treasurer until finally paid for. I mean by written up that it was written up on a stock certificate. Every time a subscription was cancelled, it just released so much of that stock, of those stock certificates, and that amount of stock went back into the treasury and became treasury stock. One just stood off the other, provided, we will say, that nothing had been paid except some notes, if the notes were given back and the contract cancelled the stock ipso facto went back.

Wallace Coburn had a subscription, in addition to

his option. I think he had both. The subscription evidenced by a promissory note. It is true that the books of the Northwestern Trustee Company while I was there officially were always open to the inspection of the stockholders. We didn't try to conceal any of these things.

Q. Isn't it a fact that McRay and Clouston and Mr. Black were at all times, while you were there, ready and willing to carry out their contract if there had been any services to be performed as far as you know?

A. I don't know about McRay and Clouston. I know that Mr. Black drew plans and had them at the office several times. Those contracts are still subsisting, as far as I know, except this one which was cancelled by motion of Robert Sidebotham. My subscription was the same as all others. Well, the only actual income they had was from the two contracts that were got from McVey while I was with them. Of course, in addition to that, stock was being sold for money and notes, those notes were drawing interest, some of them, some of them at least were. During the time that I was with the company the company was simply in process of formation, and the gentlemen who were interested in the company one way or another were simply trying to sell the capital stock. Whether they had some extraordinary expense, like the fee of Governor Norris, in negotiating the capital trust arrangement, I don't know anything about. I don't know about



what it cost to arrange with this capital trust company.

Q. Well, now, Mr. Atkinson, you say that Rainwater and Tobin saw the books and discussed the outstanding options there; there were never any secrets about the options or subscriptions, or anything else in connection with the company while you were there; everybody discussed the matter, did they not?

A. They did, and affidavits were made giving the facts, as to the facts that were there.

No effort was made to hide anything so far as I know.

Q. Wasn't there a large, page, or half-page advertisement run in the Great Falls papers, advertising the company, and the fact also that the books were open to the inspection of anybody who desired to examine them?

A. Sometimes there were full pages, and sometimes half pages. I know that was stated in a number of the advertisements, that the books were open to the inspection of the public.

By MR. A. H. McCONNELL:

Q. Mr. Atkinson, you stated on your direct examination that you discussed the matter of the outstanding options of Bertoglio, Wilmot matters, with others, Tobin and Rainwater. And when did that discussion take place?

A. That took place different times in the office of the company.

No, I don't mean that they discussed it together, the three of them.

Q. Calling your attention to the defendant White, I will ask you if it is not a fact that the only discussion that you ever had with White relative to any outstanding options was after White had ceased to be an employe of the company?

A. No, it was before he had ceased to sell stock.

Q. Do you know when he severed his connection with the company?

A. Oh, it must have been about the 1st of March, I would judge, 1914, along there somewhere. This conversation with him relative to the outstanding options was sometime before that. He was up to the office two or three times. I showed him the options that were outstanding. I showed him these options, or discussed them with White. It was after Christmas, 1914. It was sometime within the next thirty or sixty days after that; after Christmas, thirty or sixty days. What fixed it in my mind that this discussion took place with White before he severed his connection with the company: he severed his connections with the company about the same time that I did. The reason I fixed Christmas, we moved to the First National Bank building just a few days before Christmas. I know the matter was talked over in the First National Bank building, either in January or February. That was when we moved the office of the fiscal agents. Some time before that we had been together. I refer to the books of the company, yes sir. Well, the books were practi-

cally all open to the examination, of course, if a person wanted to know about a certain option, the amount of it, you wouldn't have to take all the books to see it.

It is a fact that in July, 1913, to April, 1914, at which time I was with the company, the company was simply in a state of organization. Yes, and that very little material fact could be ascertained from an examination as to the state of the company's condition at that time, excepting that it was in a state of organization. It would show the amount of stock that was held, the amount of notes that were held, and the amount of options. To a certain extent, the executive committee minutes were open to the inspection of the employe.

By MR. GALEN:

Q. Mr. Atkinson, the books of the company which were kept by you as bookkeeper and as assistant secretary, show that the stock subscription made by Mr. Rae for \$2,500.00 was canceled. Is that correct?

A. It shows that now, Mr. Galen, but it had not been canceled up to the time I left there.

Q. Mr. Atkinson, isn't it a fact that, in the First National Bank building in Great Falls, Montana, in the office of the Northwestern Trustee Company, on or about March 3rd or 4th, in the evening of one or the other of such days, you told me that the Northwestern Trustee Company was then possessed of cash or property assets aggregating \$50,000.00?

A. Of cash in the bank and property approximating \$50,000.00 or close to \$50,000.00, I wouldn't

say. I never told you that we had \$50,000.00 in cash on hand in banks.

Re-Direct Examination by Mr. Wheeler:

Q. Calling your attention to the minutes of August 13th, 1913, Mr. Atkinson, and using those to refresh your memory, I will ask you if that was the meeting at which the stock was raised from \$15.00 to \$20.00 a share?

A. Yes, it was.

Q. And I will ask you who was present at that meeting; who were actually present of the stockholders in person?

A. In person there were Robert R. Sidebotham, J. G. G. Wilmot, E. R. Edwards, O. S. Woods, E. L. Norris, J. R. Grogan, J. H. Davis.

Q. Calling your attention particularly to the record of the proxies, I will ask you who it was that held proxies of the majority of the stock present at that meeting?

A. Mr. Sidebotham held the majority of the proxies.

Q. I will ask you if any other reason was stated by Mr. Sidebotham, prior to the meeting of the stockholders, than that which he stated at that stockholders' meeting, why the price of the stock should be raised?

A. Well, it was mentioned that the party owning stock, and having options should get the benefit of any raise if they would dispose of their stock, it would be worth that much more to them.

Q. Well, these notices that were sent out to the

stockholders, notifying them that one of the purposes of the meeting was for raising the price of the stock, was that sent to the stockholders who had paid up their subscriptions, and to those also who had not paid up their notes?

A. I think those notices were sent to everyone whose name appeared on the books as stockholders.

Q. What particular object did they have in mentioning to the stockholders in those notices, with reference to raising the stock, why was that inserted in there, if you know any other reason, excepting notifying them that the meeting was to be held?

A. I know of no other reason except to notify them that the meeting was to be held. It just stated the object of the meeting, was all.

Q. When stock was optioned off, for instance, the option to Bertoglio, the option to Sidebotham and Wilmot, and the various parties, what have you to say as to whether the stock was segregated upon the books of the company, if you know?

A. It was. The certificates were written out and held.

Q. So that it then ceased to be treasury stock of the company?

A. Yes, it was taken out of the treasury stock.

I do not know that some of the stock under my option, which had been transferred to Sidebotham and Wilmot was sold to Bessie Arlington.

Q. Where did most of the stockholders of the Northwestern Trustee Company reside while you were connected with the company?



A. Well, at the first the majority of them lived around Great Falls, then afterwards the subscribers were coming in from different parts of the state.

There must have been ten or twelve agents were selling the stock, or something like that, in different parts of the state, some around Havre, some around Great Falls, some around Malta, and through that section of the country, and they were around Augusta and Gilman, and a number of other towns. Scattered generally throughout the state. It was more I think in the central part of the state at that time.

Re-Cross-Examination.

By JUDGE SMITH:

Q. You say the stock was segregated. That was under option or under subscription, or both?

A. Well, both. The certificates were written out and held by the treasurer.

A man having an option on ten thousand shares of stock, that certificate was written up and laid aside. Oh, there were a number of us talked over a raise in the selling price. Anyone who had an option would naturally benefit by it. Some of the agents had talked about it when they came in. I am talking about options and subscriptions both.

Q. You think it would affect a man who had a subscription for a thousand shares just as much as it would a man who had an option for a thousand shares?

A. Yes, if he wanted to sell the stock, it would.

I told you yesterday that the reason for raising

the selling price of the stock was discussed and given as the reason that it would create a surplus.

Q. Today you give us another reason.

I didn't give you that reason yesterday. Well, the raise in price was discussed by quite a number there at the stockholders' meeting, among themselves, and in the meeting also. I don't think it was mentioned there, or with the company, the additional reason that it costs so much to sell the stock, the expense of selling, agents, automobiles, and that sort of thing. Well, the agents have told me of the expenses they were to, in selling the stock. There was no discussion in any meeting of any officers of the company that I was present at.

Whereupon Miss Jessie Hosking, a witness called and sworn on behalf of the Government, testified as follows:

DIRECT EXAMINATION BY MR. WHEELER:

My name is Jessie Hosking. I am a stenographer and am acquainted with Mr. Sidebotham and Mr. Wilmot. I was employed by them in the capacity of stenographer and bookkeeper. I am also acquainted with Mr. Rae, Mr. Alderson, Mr. Speer, Mr. Bertoglio, Mr. Rainwater, Mr. White, Mr. Tobin and Miss Cort.

I was employed by Sidebotham & Wilmot from November 7, 1913, until April 1, 1916, and, during that time, the office of Sidebotham and Wilmot was in the basement of the Tod Building and part of the time in the Ford Building. At the time it was in

the basement of the Tod building, the two offices of Sidebotham & Wilmot's and the Northwestern Trustee Company were not together for the first two months that I was in their employ and then later they came together. When they had offices in the Ford Building, their offices were together.

While I was working for Sidebotham & Wilmot, I had occasion to assist Miss Cort about the office of the Northwestern Trustee Company. At that time, Miss Cort was Assistant Secretary Treasurer and Book-keeper.

I saw a rubber stamp with the fac-simile of Mr. W. C. Rae's signature in the office. It was used by Miss Cort, for receipts and letters.

Q. And particularly with reference to circular letters that were sent out, what have you to say, as to whether or not she signed his name with this rubber stamp to circular letters?

MR. KELLEY: To this we object, and I take it we may have an objection and exception noted to all questions, along this line of testimony.

THE COURT: Yes.

JUDGE SMITH: I object, she said receipts and other matters.

THE COURT: She said letters. Objection overruled.

Q. And with reference to circular letters, were they signed with a rubber stamp?

A. Yes sir.

Q. Did you ever hear a conversation, or did you ever talk to Miss Cort, about what, if any, authority

she had to sign his name?

A. Well, I don't remember any particular conversation.

Q. Do you remember any particular occasion of her going to the telephone and having a conversation with Mr. Rae over the telephone?

MR. KELLY: To which we object, if the Court please, for the reason that it is self-evident that she could not tell on one end of the telephone to whom Miss Cort was talking?

THE COURT: Objection over-ruled.

MR. KELLY: Exception noted.

A. Well, I remember on one occasion Miss Cort stepped out of the office and when she returned, she told me that she had called Mr. Rae on long distance and asked him about using the stamp. I think it was on a letter, but as to what particular letter, I don't recall. It was a letter on collections, or something to the effect.

I have seen the signature of Mr. E. C. Wills a number of times and I am familiar with the signatures of Messrs. Sidebotham and Wilmot. The signatures attached to Exhibit 23 are the signatures of Mr. Sidebotham, Mr. Wilmot, and Mr. Wills.

MR. WHEELER: We now offer in evidence Plaintiff's Exhibit 23.

JUDGE SMITH: Objected to as incompetent, irrelevant and immaterial.

THE COURT: What is the object of this?

MR. WHEELER: The object is merely to show a contract existing, as to the manner, particularly

with reference to the manner in which the notes were to be paid, just to connect the agents up.

THE COURT: The Court will observe that as to any offer of evidence, it is impossible to determine how far it may affect other defendants before the case closes, but when an objection is made during the course of the trial, as to the admission of evidence by one Defendant, that doesn't affect him as absolutely useless. The better practice is to preserve your right by an offered instruction. The objection will be over-ruled.

Exception noted.

On Plaintiff's Exhibit 30, the signature at the bottom of the letter is Miss Cort's, one of the Defendants. To Exhibit 24, the signature at the bottom is that of the defendant, Miss Cort's. To Plaintiff's Exhibit 29, the handwriting at the bottom of the page is that of Miss Cort's. The signature at the bottom of Exhibits 25, 26, 27 and 28 is M. A. Cort's. On Exhibit 31, I signed Mr. Sidebotham's name, with my initials. Mr. Sidebotham dictated that letter and I wrote it on the typewriter. I signed the letter at Mr. Sidebotham's suggestion.

Exhibits 32, 33 and 34 are in the handwriting of M. A. Cort's.

That is Mr. Rae's signature with the rubber stamp on Exhibit 31. I am familiar with the impression that was made by the rubber stamp of Mr. William C. Rae's signature.

My signature is on Exhibit 36, which letter I probably phrased.



Q. Calling your attention to Plaintiff's Exhibit 37, the signature of J. W. Speer on the bottom of it, I will ask you whose signature that is?

A. That is Mr. Speer's signature on Exhibit 37, I signed it with my initials. I don't know that Mr. Speer gave me specific permission to sign his name to that letter.

That is my signature on Exhibit 38. I received my instructions from Sidebotham and Wilmot to sign it.

MR. WHEELER: We now offer in evidence Plaintiff's Exhibits 31, 32, 35, 28, 27, 26, 25, 29, 24, 30, 34, 33 and 38.

Exhibit 35 reads as follows:

NORTHWESTERN TRUSTEE COMPANY.

(Incorporated.)

Authorized Capital Stock and Surplus Over  
\$500,000.00.

HOME OFFICE GREAT FALLS, MONTANA.  
Branch Offices in Principal Cities and Towns in  
Montana.

BOND, MORTGAGE and INVESTMENT  
SECURITIES.

A. M. ALDERSON, President.

R. R. SIDEBOTHAM, Vice President.

D. G. BERTOGLIO, Vice President.

W. R. ALLEN, Vice-President.

J. W. SPEER, Vice-President.

W. C. RAE, Secretary and Treasurer.

J. G. G. WILMOT, Chairman.

J. HENRY EVERS, Director.

B. W. PORTER, Director.

W. A. PATTERSON, Director.

L. W. GIBSON, Director.

HENRY A. MEYER, Director.

ALBERT G. KARCHER, Director.

Great Falls, Montana, July 24, 1914.

Dear Sir:

Enclosed you will find a reproduction from an article published in the Great Falls Tribune of recent date, which will give you some idea of the development of our institution. Your earnest co-operation is solicited at this time.

We have funds in the treasury for farm loans, and if you or any of your friends wish a loan, kindly write us.

In the past few weeks, many new stockholders have been added, and there are today over 500 stockholders.

Yours very truly,

NORTHWESTERN TRUSTEE CO.

Per Wm. C. Rae, Sec. and Treas.

Exhibit 36 was read in evidence as follows:

NORTHWESTERN TRUSTEE COMPANY.

(Incorporated.)

Authorized Capital Stock and Surplus Over  
\$500,000.00.

HOME OFFICE, GREAT FALLS, MONTANA.  
Branch Offices in Principal Cities and Towns in  
Montana.

SIDEBOTHAM & WILMOT  
BOND, MORTGAGE and INVESTMENT  
SECURITIES.

A. M. ALDERSON, President.

R. R. SIDEBOTHAM, Vice-President.

W. C. RAE, Secretary and Treasurer.

M. A. CORT, Asst. Sec. and Treas.

J. W. SPEER, Director.

A. M. ALDERSON, Director.

J. G. G. WILMOT, Director.

W. R. ALLEN, Director.

W. C. Rae, Director.

ROBT. R. SIDEBOTHAM, Director.

D. G. BERTOGLIO, Director.

Great Falls, Montana, January 29, 1916.

Mrs. Elizabeth Olsen,

Stearns, Montana.

Dear Madam:

Your letter of January 24th received and in the absence of Messrs. Sidebotham & Wilmot, I will take the liberty to say, that at the last stockholders' meeting held in August, the matter of paying a dividend was discussed. After due and careful consideration of the matter, it was decided best not to pay a dividend for at least another year, but to use the Company's funds for foreign mortgage loans. If the stockholders so decide, a dividend will be declared at the next annual meeting in August, and if such is the case the stock you and your sons has purchased will draw a dividend from the date of your subscription.

Our Company is progressing very nicely and our surplus account is steadily increasing, as will be seen by the statement mailed you several days ago.

Yours very truly,

SIDEBOTHAM & WILMOT,

Per J. Hosking.

Exhibit 37 was read in evidence as follows:  
NORTHWESTERN TRUSTEE COMPANY letter head.

Great Falls, Montana, July 18, 1914.

Mr. R. W. Lincoln,

St. Ignatius, Montana.

Dear Sir:

Enclosed you will find petition for the purpose of reducing the Board of Directors from 13 to 7 members. The officers of the institution find that on account of having such a large number of directors, it is almost impossible to get a quorum to conduct business, therefore, we deem it advisable at this time, prior to our annual stockholders' meeting, that we take the necessary steps required by law to secure the signature of at least  $2/3$  of the stockholders permitting this change to be made.

All of the stockholders we have presented the petition to have signed, and we will appreciate your signing and mailing it back to us at your earliest possible convenience.

We beg to call your attention to the fact that we are now making loans and are desirous of getting good farm loans at 40% of the actual value of the land. If you are desirous of securing a loan or have

a friend or neighbor wanting a loan, kindly write us.

Thanking you for your earnest co-operation, we are

Yours very truly,

NORTHWESTERN TRUSTEE COMPANY,

Per J. W. Speer, Vice President.

Exhibit 34 was read as follows:

NORTHWESTERN TRUSTEE COMPANY  
LETTER HEAD.

Great Falls, Montana, Feb. 7, 1916.

Mr. R. W. Lincoln,

St. Ignatius, Montana.

Dear Sir:

Your letter of January 27th received. We have never loaned any money on stock, although there is not much question but that it will have a loan value at no distant date. The par value of the stock is \$10.00 per share, and that is probably the limit that will ever be loaned. The first loans as made will probably be 50% of the par value. The writer has loaned par value on this stock and thinks the Company would be safe in doing so.

Yours very truly,

NORTHWESTERN TRUSTEE CO.

Per M. A. Cort, Asst. Treas.

JUDGE SMITH: I object to Exhibit 31 because if received in evidence it would be a violation of the constitutional rights of the defendants. He would be compelled to introduce evidence against himself. It appears to be a personal letter signed



by this lady on the witness stand, from Robert R. Sidebotham and addressed to Mr. J. G. G. Wilmot at the Northern Hotel at Billings, Montana. We object to it because it has not been accounted for, no testimony as to where it came from; that it was ever posted, or that it was ever received, and if it were a genuine document, the only way they could have possibly gotten hold of it, is from the private correspondence of one of the defendants in this case, and its introduction in evidence is a violation of his constitutional rights, unless it be accounted for, it will be objected to for those reasons.

THE COURT: When a document is offered in a trial, the court never stops to inquire where it comes from, unless it is shown that it was procured in violation of law. Furthermore, having been dictated to this witness on the stand, she could testify as to its contents without the letters as far as that goes. The objection will be overruled.

Exception noted.

JUDGE SMITH: We would like to cross-examine this witness before it goes into evidence as to how she came by it.

THE COURT: You may do so, briefly.

#### CROSS-EXAMINATION.

By JUDGE SMITH: After I signed my initials to that letter, I probably mailed it to Mr. Wilmot. I have no recollection of having mailed this particular letter. No sir, I cannot say positively that I mailed this letter. I did not bring that letter down here from Great Falls. I first saw it after I signed

it right here on this witness stand. No sir, I haven't any independent recollection of it.

JUDGE SMITH: That is all, and I ask to put the United States District Attorney on the stand, to inquire of him where he got this letter.

THE COURT: Well, not at this time. The Court will take this matter and reserve it for the moment, until I look up the law a little.

JUDGE SMITH: Your Honor reserves the ruling on it.

THE COURT: Yes.

Whereupon exhibit 33 was received in evidence in words and figures as follows, to-wit:

NORTHWESTERN TRUSTEE COMPANY  
LETTER HEAD.

Great Falls, Montana, Feb. 21, 1916.

Mr. Arthur H. Hooper,

Dixon, Montana.

Dear Sir:

Your letter of the 19th received. We regret to learn that you are not in position to meet your note. We certainly expected the money in January, as you stated you had a horse which you expected to sell at that time.

You asked what you have to show for the money. Your stock certificate was issued under date of January 10, 1914. You are entitled to your portion of the earnings of the Company since that time. No dividend has as yet been declared. The first dividend declared will be based on the time the stockholder has owned his stock. While it is held

here, it is held only as collateral to your notes until they are paid. According to your contract, we can forfeit you at any time we see fit. In that case you would lose what you have paid in. We have not taken advantage of this, although we would be justified in doing so where people make no honest effort to pay their notes.

Yours truly,

M. A. CORT.

PLAINTIFF'S EXHIBIT 23 reads as follows:

Great Falls, Montana, Sept. 5, 1914.

We, Sidebotham & Wilmot, Sole Fiscal Agents for the Northwestern Trustee Company, for the sale of the Capital stock of the said Company, do hereby, appoint you, Edward C. Wills, as our agent to secure and obtain subscriptions to the capital stock in said Company, from subscribers under the conditions and subject to the restrictions as follows:

### I.

The term of your agency is ninety days from the date hereof. You are required to devote your entire time, energy, attention and ability, to secure subscriptions to the capital stock of said company at not less than Twenty Dollars (\$20.00) per share. This price may be increased at any time by the Company and such increase shall be binding on you three days after notice thereof is mailed you, at your address, or notified in person by us.

### II.

All subscriptions shall provide as follows:

That twenty-five percent of the purchase price

of stock shall be paid for at the time of the subscription by check of the subscriber, payable to Sidebotham & Wilmot. In special cases you may accept a part of the said twenty-five percent payment by check as aforesaid, and part by the promissory note of the subscriber, and in exceptional cases, you may accept the payment of the whole of the said twenty-five percent by the notes of the subscriber. All notes taken for the said twenty-five percent or any part thereof shall be made payable to the order of the subscriber and endorsed by him in blank.

### III.

Your compensation for services will be fifteen (15) percent of the subscription price of the stock subscribed for, payable as herein-after provided.

### IV.

In accepting the notes of the subscribers for the whole or any part of the twenty-five percent hereinafter mentioned, you shall, in each instance, take one note in an equal amount to the commission or the balance of the commissions due you, equivalent to fifteen percent as the case may be, and a note of ten percent under the same condition. The balance, or seventy-five percent of the subscription, price may be paid for within twelve months after date, respectively, and evidenced by the promissory notes of the subscriber, payable monthly or quarterly and payable to Sidebotham & Wilmot.

### V.

One-half of the payment of the twenty-five per-

cent referred to, when less than the whole thereof is paid in cash, shall be made payable to you and the other one-half to us, and in all cases a proper accounting and adjustment shall be had between us as to the amount of amounts due you as commission for subscriptions upon the basis above mentioned.

SIDEBOTHAM & WILMOT.

ROBERT R. SIDEBOTHAM.

J. G. WILMOT.

Accepted this 5th day of September, 1914.

E. C. WILLS.

Whereupon Exhibit 24 was received in evidence, and is in words and figures as follows, to-wit:

NORTHWESTERN TRUSTEE COMPANY  
letter-head.

Great Falls, Montana, Dec. 31, 1914.

Mr. T. W. Toohey,  
Vaughn, Mont.

Dear Sir:

Enclosed find stock certificate No. 970 for 10 shares of the capital stock of the Northwestern Trustee Company. Also receipt for the stock, which kindly sign and return.

We are also enclosing your cancelled note for \$150.00.

The stockholders did not declare a dividend at the last annual meeting held in August. It is not likely that a dividend will be declared before next August, but we feel reasonably sure that a dividend will be declared at that time. You will note that your stock certificate is dated November 26th, 1913, and



your stock will draw dividends from that date.

We thank you for your promptness in meeting your obligations, and remain

Yours very truly,

NORTHWESTERN TRUSTEE COMPANY.

By M. A. Cort, Asst. Sec. and Treas.

Whereupon Exhibit 25 was received in evidence, and is in words and figures as follows, to-wit:

NORTHWESTERN TRUSTEE COMPANY letter-head.

Great Falls, Montana, March 27, 1915.

Mr. Ezra I. Shaw,

Missoula, Mont.

Dear Sir:

We acknowledge receipt of your letter enclosing draft for \$400.00 in settlement of your two notes. Your notes now have \$6.20 accrued interest on same, but in as much as you have paid your notes long before maturity we will allow you the benefit of the discount for pre-payment, as per circular letter enclosed, which would more than cover the accrued interest. We explain this matter to you so that you will not be under the impression that no interest is charged on notes. Others in your vicinity who will have to pay interest might think we were discriminating against them. You will note that your stock is dated January 15th, which is the date of your subscription, and your stock has an earning power since that date. Had some one else paid cash for his stock on that date, he would receive no more benefit than yourself. If stock was not issued until

it was fully paid for no interest would be charged, but as it is issued the same date as subscription is given and the subscriber has the benefit, interest is charged on all notes.

We are enclosing your two cancelled notes. Also stock certificate for 20 shares of stock together with receipt for same. Please sign receipt and return to us in stamped envelope enclosed.

Yours very truly,

NORTHWESTERN TRUSTEE CO.

Per M. A. Cort, Asst. Sec. and Treas.

Whereupon Exhibit 26 was received in evidence and is in words and figures as follows:

NORTHWESTERN TRUSTEE COMPANY letter head.

Great Falls, Montana, Feb. 3, 1915.

J. A. Morrow,

Gold Creek, Montana.

Dear Sir:

Your letter of February 1st has been duly received. We are enclosing copies of the notes you signed. Upon taking this matter up with Mr. Sidebotham, who was one of the representatives in this sale with Mr. Wills, he states that they explained to you that there would be no interest if paid within 30 days. This, however, is a matter that they had taken entirely upon themselves as, if you had taken this up within the 30 days, they would have had to pay the interest. Inasmuch as you receive the dividends on the stock from the date the subscrip-

tion is given, we are compelled to off-set interest on something you have not paid for.

We do not know whom you refer to as reference in Butte or Deer Lodge. We give you as reference in Butte or Meaderville, Mr. D. G. Bertoglio, one of the wealthiest Italians in the state, who is one of the largest stockholders in the company. You may also refer to A. M. Alderson, Secretary of State, or to W. C. Rae, State Treasurer, at Helena. Also, J. W. Speer, attorney, formerly mayor of Great Falls. We further give as reference, the Conrad Banking Co., The American Trust & Savings Bank, Stanton Trust & Savings Bank and the Great Falls National Bank, all of Great Falls. We do not know where you got the name of Mr. Hubb, whom you speak of as being dead.

We have so many stockholders that it is hard for us to remember all of them personally. We should like to have you write us who this Mr. Hubb is that you refer to. We have a stockholder by the name of Rabb, but had not heard of his death.

Yours very truly,

NORTHWESTERN TRUSTEE COMPANY.

Per M. A. Cort, Asst. Sec. and Treas.

Whereupon Exhibit 27 was received in evidence, and is in words and figures as follows, to-wit:  
NORTHWESTERN TRUSTEE COMPANY letter-head.

Great Falls, Montana, May 14, 1916.

Mr. Gust Berg,

Craig, Montana.

Dear Sir:

We beg to acknowledge receipt of your letter of the 10th enclosing postal money order for \$40.00. According to our records your account now stands as follows:

Payments: Balance due on principal.....						\$5.00
\$ 5.00	Interest on	\$75.00	from 4/ 4/14 to	6/13/14		1.15
5.00	" "	70.00	" 6/13/14 "	6/30/14.....		25
5.00	" "	65.00	" 6/30/14 "	9/ 3/14.....		.90
5.00	" "	60.00	" 9/ 3/14 "	9/30/14.....		35
10.00	" "	55.00	" 9/30/14 "	10/26/14.....		32
40.00	" "	45.00	" 10/26/14 "	5/14/15.....		1.98
<hr/>						
\$70.00	Total.....					\$9.95

From the above, you will note that we have charged you interest only on the unpaid amounts. You will also note that you have only paid \$70.00, besides the cash payment of \$25.00, which leaves your remittance short \$5.00 besides interest.

Your stock was issued under date of April 4, 1914, and the full \$100.00 has had an earning power since that time. All of our notes bear interest. This would not be the case if the stock was not issued until it was fully paid for.

According to the terms of your contract your last payment would be due August 1st. However, as soon as we receive above amount, your stock will be mailed to you.

If we have made an error in credits given you, kindly advise.

Yours truly,

NORTHWESTERN TRUSTEE CO.

Per M. A. Cort, Asst. Sec. and Treas.

Whereupon Exhibit 29 was received in evidence, and is in words and figures as follows, to-wit:

NORTHWESTERN TRUSTEE COMPANY letter head.

Great Falls, Montana, June 11, 1916.

Mr. R. R. William,  
Fallon, Montana.

Dear Sir:

Your letter of June 9th received. Our rate has been 8% ever since we started loaning money and we do not believe it will be lower for some time to come. In fact, securing good loans at 8% is a very easy matter. In some parts of the state 12% is charged by the banks, but we have not charged to exceed 8%.

The amount that the stock earns is not afixed rate, as all depends on what is made each year. We guarantee 6% on three-year deposits, but we believe the stock will earn much more even than 8%.

We are enclosing herewith a blank contract, which is exactly the same as the one you signed.

We are sorry if there were any misrepresentations and believe you will be well satisfied with your



stock in time to come.

Yours very truly,

NORTHWESTERN TRUSTEE CO.

Per M. A. Cort, Asst. Sec. and Treas.

Whereupon Exhibit 28 was received in evidence, and is in words and figures as follows, to-wit:

NORTHWESTERN TRUSTEE COMPANY letter-head.

Great Falls, Montana, August 31, 1915.

Mr. Leo E. Garrow,

Wolf Creek, Mont.

Dear Sir:

The following payment will be due from you on Sept. 1st:

August 1st payment .....	\$5.00
September 1st payment .....	5.00
Interest .....	5.15
Total .....	\$15.15

The above is the total amount due on your stock. Please remit promptly and your stock will be mailed to you.

In figuring interest, we only charge on the unpaid amount each time. That is, whenever you make a payment interest stops on the payment made. Your stock is dated May 20, 1914, and has had an earning power since that date for the full \$100.00.

Yours very truly,

NORTHWESTERN TRUSTEE CO.

Per M. A. Cort, Asst. Sec. and Treas.

Whereupon Exhibit 32 was received in evidence, and is in words and figures as follows, to-wit:  
NORTHWESTERN TRUSTEE COMPANY letter head.

Great Falls, Montana, June 7, 1915.

Mr. C. O. Murray,

Boulder, Montana.

Dear Sir:

We have your letter of June 3rd and note what you say in regard to interest. We cannot understand who you get the impression that the notes do not draw interest, as they plainly show that they do. Perhaps the salesman did not make this clear to you. All stock is dated the same date as the subscription. Your stock is dated November 28th and has been earning dividends since that time. There would be no sale if this stock was not issued, so in every case it is issued and held as collateral to all the notes until they are paid. The reason why you pay interest is because you are put on the same basis as the man who bought his stock the same day you bought yours and paid cash for it. In the one case, we have the man's money to invest. In your case we do not. If your stock was not issued until it was fully paid for, then you would pay no interest. Neither would your investment be earning anything for you. We assure you that we are doing the same by you as we are with all others. We trust we have made this point clear to you.

Kindly advise when you think you will be in position to take up this note. While we do not like to

renew notes, we presume it will be necessary in your case.

Yours very truly,

NORTHWESTERN TRUSTEE CO.

Per M. A. Cort, Asst. Sec. and Treas.

Whereupon Exhibit 38 was received in evidence, and is in words and figures as follows, to-wit:

NORTHWESTERN TRUSTEE COMPANY letter-head.

Great Falls, Montana, Oct. 1, 1914.  
TO THE STOCKHOLDER OR SUBSCRIBER  
ADDRESSED:

At a meeting of the Board of Directors held on the 25th day of September, the selling price of the Company's stock was advanced from \$20.00 to \$30.00 per share.

The progress of our institution has been rapid, and today there are over 600 stockholders and the number is increasing daily.

The Company now plans to extend its operations into Washington, Oregon, Idaho and Wyoming, and it is believed by those most deeply interested that we will surely be the largest institution of its kind in the Northwest.

The Company's funds are being loaned out as fast as they are paid in on first mortgages on Montana farms and ranch property.

We have provided for the old stockholders a small block of stock that may be purchased by them within fifteen days from date, inasmuch as the selling price of the stock was increased without their

having prior notice of such increase. You can purchase the stock at \$20.00 per share on a cash basis or easy terms as low as 10% cash, and the balance on monthly, quarterly or semi-annual payments, having as long as one year for the payment of same.

We are enclosing a separate application for the purchase of stock and are willing for our old subscribers to make their own terms. We will send back the necessary papers to be signed up at \$20.00 per share. This purchase can only be made on condition that it reached our office within 15 days from this date.

Thanking you for your earnest co-operation, we are,

Yours very truly,

SIDEBOTHAM & WILMOT.

Sole Fiscal Agents,

By J. Hosking.

Whereupon Exhibit 30 was received in evidence, and is in words and figures as follows, to-wit:

NORTHWESTERN TRUSTEE COMPANY letter head.

Great Falls, Montana, Feb. 18, 1916.

Mr. Glenn Miller,

Canon Creek, Montana.

Dear Sir:

Your letter of February 14th received and note all you say. We do not know of any one increasing their holdings of our stock at this time. The only people who handle stock successfully are our agents, and they are not allowed to sell anything but treas-

ury stock under their contract. When their contract is completed, they will be in position to re-sell stock.

We think probably you will have a better chance to dispose of your stock after the August meeting. On account of no dividends having yet been paid, the stockholders are not inclined to increase their holdings. No dividend will be declared before August, but believe one will be at that time. You should hold your stock until you have received the first dividend as you have held it for quite a while. The first dividend will cover time from date of subscription.

Yours truly,

NORTHWESTERN TRUSTEE CO.

Per M. A. Cort, Asst. Treas.

While I was in the employ of Sidebotham and Wilmot, in the office of the Northwestern Trustee Company, I had occasion to send out, or assist in sending out circular letters, and when circular letters were sent out, they were mailed to the stockholders and subscribers.

#### CROSS-EXAMINATION.

By JUDGE SMITH: At one time the offices were in the Todd Building. The corporation had an office there and the fiscal agents also. I wouldn't say that you could hear from one extreme corner to the other in an ordinary conversation. I said that Miss Cort stepped out of the office and when she returned, she told me that she had called up Mr. Rae over long distance. I don't know



whether she did or not, she just said that she called up to see whether she would have permission to sign this certain letter, the one in question with this stamp. It was that particular letter that she told me that she had asked permission to sign. No, I don't know that Mr. Rae gave her specific authority to use the rubber stamp on any other document at all, except on certain letters that were going out. It was always my understanding that she had permission to sign his name to blank receipts, or letters that were going out. It is a fact that the only specific understanding in which I knew of her having authority to use the rubber stamp was the one she told me about.

Q. You don't mean to have the court or jury understand that the particular letter, Exhibit 35, was the letter that was being stamped that day, but some other letter concerning some collections, is that correct?

A. No, I didn't want you to understand that this was the letter, I said I didn't know just which was the letter.

Q. Now then, didn't Miss Cort say to you on that occasion that she called up Mr. Rae to find out about the subject matter of this certain letter which she was sending out on a matter of collections, that is, she was sending out some letters on collections, and isn't it a fact that she called Mr. Rae about sending out this particular letter?

A. Yes, and signing his name to it.

## RE-DIRECT EXAMINATION.

By MR. WHEELER: I don't remember exactly what the subject matter was, my impression is it was a letter in regard to collections. No, sir, I do not remember what was in that letter.

Q. Do you know of anything Miss Hosking, going to show that Miss Cort got authority to sign his name?

A. What do you mean, in the line of anything written, or something like that?

No sir, I don't know if there was anything said, or if there was anything done to indicate that she had authority. She would sign his name to receipts and sometimes she would sign her own, and such letters as were calling for stockholders meetings, and things like that, why, she would sign his name to them.

I don't remember that there were very many circulars sent out under Mr. Rae's signature. I should say that the letter, Exhibit 35, was sent out generally to all the stockholders and subscribers for stock of the company. I was in the office at the time that that was sent out. I do not recollect having assisted in the sending and mailing of that specific letter, but whenever circulars were sent out, I always helped to mail them.

Whereupon MRS. ALICE M. DECELLES, a witness called and sworn on behalf of the State, testified as follows:

DIRECT EXAMINATION BY MR. MURPHY:

My name is Alice L. DeCelles. I live in Havre,

Montana. I have lived in Havre for 25 years. My husband's name is August Decelles. I know the defendants, Mr. Robert R. Sidebotham and Mr. J. G. G. Wilmot, and I met a man by the name of Henry A. Meyers. I am 67 years old. Mr. DeCelles is now at home in Havre. He has been sick for some time, he is kind of out of his mind. He has been sick for some time past, four months in bed. I had business transactions with Mr. Henry A. Meyer. He came to my office, I think, in 1913.

Q. And what business did you have with him?

JUDGE SMITH: That is objected to as incompetent, irrelevant and immaterial. Mr. Meyer's name has been entered in this indictment as a defendant, but has not been apprehended. I don't understand that the Government can put the name of John Doe in an indictment and prove what he said.

THE COURT: It is a conspiracy charge if they prove it. The acts and statements of one conspirator are competent evidence against his fellows. You may proceed. Objection overruled.

Exception noted.

When Mr. Meyer came to my house, he came there to sell some stock in the Northwestern Trustee Company. Just Mr. DeCelle and I were present at the time that Mr. Meyers came. I had a conversation with Mr. Meyers about the stock, you know about buying stock of him. He said it was the best company in the Northwest and so many was into it, and all the business men, and he made it so clear to us that we thought it was all right. He said the

company was to sell those bonds and build houses and one thing another. It was going to be so nice and prosperous that it couldn't fail, it was just perfectly honest, there would be nothing against it. He said, we would have 8 percent on all our stock as it would rise we would have the rise of the stock and then we could have 8 per cent; 8% interest on all once a year, I think. He stated the first payment would be made a year from the time we signed for the stock. He said the Governor, and Senator Gibson and most all the officials of the State were connected with the company.

I purchased some stock in the Northwestern Trustee Company. I bought three hundred and thirty-three and a third shares at fifteen dollars a share. I signed for it that day, and that afternoon we were down to Mr. Boone's Drug Store, I didn't buy mine until two or three weeks afterwards. I made a check to the Northwestern Trustee Company from the bank. The bank mailed the check to the company for me. The check was for Five Thousand Dollars. My husband purchased \$2,500.00 worth of stock. We both signed the same day. He went and paid for his at the bank. I didn't go to the bank with him, but he talked to both of us together when we signed up, but I didn't go to the bank with him. I don't know whether he paid his in cash or in checks. I don't remember whether he told me what kind of stock it was. I cannot say, I don't understand business very well, and, of course, I don't remember. He said the par value of the



stock was Ten \$(10.) Dollars. I don't remember that any explanation was made to me as to why the stock was sold at Fifteen (\$15.00) Dollars. He said that was the price of the stock then at that time, and he said it was liable to go higher at any time. I still own the stock in the company. I have never received any interest or dividend upon the stock. Not a cent.

I know Mr. Sidebotham quite well and I have seen Mr. Wilmot several times. I first met Mr. Sidebotham at my own house. He came there after I signed for my stock. I cannot say whether Mr. Wilmot was with him the first time, I cannot say that, but they did come several times together. Mr. Sidebotham said the company was the best thing in the Northwest and everything perfectly honest, and stated that there was so many of the best ment, business men and everything in it, that it couldn't be anything else but just honest. I don't remember just how much he said that they were worth, so much, and everything like that, I cannot just explain, just tell how much it was. No, I didn't speak to him at that time about initerest or dividends on the stock I owned. He said I should get eight per cent and get it every year. I don't know, maybe a month after I purchased the stock, Mr. Sidebotham came to see me. It was after I paid for it. I don't know what the occasion of his coming was. He just came to be sure that everything was all right. My husband and I were always together. I don't know as he did discuss with my husband the purchase of the



stock. My husband paid for his stock the same as I paid, fifteen dollars a share.

Mr. Wilmot and Mr. Sidebotham called together, and when they called together, they were talking about it, that it was all honest and everything. They didn't mention how they transacted business, only that they were on the square as far as I could see, I don't remember that they explained about the purpose of the Company. I don't remember just what they said about that. Mr. Wilmot came up to my place alone without Mr. Sidebotham. He wanted to borrow \$3000.00 more. He asked me about the \$3000.00 and I said, no, I didn't have it, and that just about settled it. He wanted to borrow \$3000.00 and I don't think he discussed the Northwestern Trustee Company, he just met me on the back porch.

JUDGE SMITH: I move to strike that out as irrelevant and immaterial about the borrowing of \$3000.00, in a conversation there was nothing else said in.

THE COURT: Oh, let the answer stand. The motion will be denied.

JUDGE SMITH: Note our exception taken.

Mr. Wilmot and Mr. Sidebotham, I don't think ever came to our house with anybody else.

Q. Was the time when Mr. Sidebotham called there,—he called there with any person at one time,—calling your attention to a couple of years after you bought this stock?

Mr. Sidebotham came with Mr. Alderson, at least, he introduced him as Mr. Alderson, at our house. I

was alone when they came into the house. Mr. Alderson said that he was Secretary of State, I believe, or something like that, and he said he was under such heavy bonds that he couldn't do anything wrong, and I need not be a bit alarmed that everything was honest so that Mr. Alderson, or the man that he introduced as Mr. Alderson said, yes, everything is straight, it couldn't be anything else. We had not been complaining of our investment prior to that time outside of my family or about the business affairs of the Northwestern Trustee Company. It was going on so prosperous. Well, Mr. Alderson said that it might be three years yet before they had it settled, it might be years, but it would all be honest someday. I couldn't tell you as to the date, but it was sometime in the second year. I bought the stock in 1913. I think it was in the winter time, I think it was about a year ago last winter sometime. That would be in the winter of 1914, when I took my stock; it was in the second year after I took my stock, but I couldn't tell you what date it was. At that time, I don't think there was any talk or discussion about other members of the Board of Directors, or officers of the company. They didn't stay long. I don't know that Mr. Rae said anything to me. Mr. Wilmot said any time that I wanted to sell my shares that he would sell them for me, but he never did. They said if I should die, why, my heirs could get that money any time, there would be no trouble. Mr. Sidebotham said that. I don't know

whether it was the first time he came or the second time, some time along there.

Yes, I recognize Plaintiff's Exhibits 57 and 58. I received them through the mail right at my own house that we live in By the mail man. I couldn't say that Exhibit was contained in this envelope No. 58, but I think so. I kept these in my possession after I received them. Why, I sent them through the mail to Mr. Paisley, the Postoffice Inspector.

MR. MURPHY: I offer in evidence Exhibit 58 and 57.

Whereupon said Exhibits 57 and 58 were received in evidence and are in words and figures as follows:

NORTHWESTERN TRUSTEE COMPANY  
LETTERHEAD

Great Falls, Montana,

July 31, 1913.

Mrs. Alice M. Descelles,

Havre, Montana.

Dear Sir:

The opportunity to buy stock in the Northwestern Trustee Company is a rare one. If you will review back the organization of trust companies and mortgages bond companies in this and other states, you will find that there is only one time when it is possible for you to buy stock in such institutions and that is at the beginning.

In options, subscriptions, notes receivable and cash, this company now has more than \$350,000.00 in business upon its books, which is a record that

has been gained by no other corporation in so short a time to our knowledge.

We thought in all fairness that we should write you and inform you of these conditions. On the 13th day of August the paid-up stockholders of this company will assemble at the company's office at Great Falls, Montana, for the purpose of increasing the Board of Directors to thirteen and effecting a permanent organization. Thirteen of the best men that can be chosen from our many stockholder will be elected.

Another important issue before this meeting will be the question of whether or not the stock shall advance from \$15.00 to \$20.00 per share. A number of the Board of Directors have felt that the stock should advance to \$20.00 per share on account of the progress made and the strong personel built up by this company. However, they thought this was a very important move and they decided to have the stockholders vote upon this issue as it is the intention of the people most interested in this company at this time that all important points pertaining to the company's policies and future business shall be voted upon directly by the stockholders.

We feel satisfied if you will give this company the attention it deserved that you will become a stockholder, and if you are already a stockholder you will increase your subscription as there is but little question but that the stock will advance \$5.00 per share shortly. The books of the Company are open for your inspection at the Company's office, lower

floor of the Tod building, corner Central Avenue and Second Street.

Thanking you for due consideration, we are

Yours very truly,

NORTHWESTERN TRUSTEE COMPANY,

Robert R. Sidebotham,

President.

Envelope endorsed:

NORTHWESTERN TRUSTEE COMPANY

General Offices

Great Falls, Montana.

Ex. 58 Plf.

MRS. ALICE M. DeCELLES,

Havre, Montana.

Two one cent postage stamps, cancelled

Post marked: Great Falls, Aug. 1-13 10 AM

Mont.

JUDGE SMITH: I object to these for the reason that they have not been properly identified. There is no testimony that the Postoffice establishment was employed in their transmission either by depositing the letter, or taking it up, or anything to indicate that the Post Office establishment of the United States was used in transmitting this.

THE COURT: Objection overruled.

Exception noted.

THE COURT: Is there any proof that this circular letter was authorized by the Company?

MR. MURPHY: I think that is the very letter that was mentioned in the minutes.

THE COURT: All right, I want to understand



it, so as not to be mislead. I don't want you to be mislead by the fact that the Court admits it now, of course, if there is not sufficient evidence to show mailing the Court will not be bound by it through the progress of the trial. I think if it is shown that such letters was issued from the Company, if it is shown that this letter was mailed by the Company, I think the jury would be entitled to infer that this was mailed by the company.

These are the ones, plaintiff's exhibit 59 and 60. I think there was a blue circular in it. The exhibit inserted in count two of the indictment is the blue circular i referred to, and were all contained in one envelope, I think. I am pretty sure they were. I sent them to Mr. Wheeler. They were received by me in that envelop, plaintiff's exhibit 61. From the, — well, the Company sent them to me through the pose office. Yes, sir, I received them from the delivery man, he lives right in my own town.

MR. MURPHY: I offer Exhibit, 59, 60 and 61 and the blue circular inserted in the second count of the indictment.

The green circular, number 60, is the one I have spoken of received in the letter with other papers that I have spoken of.

MR. MURPLY: I offer the four in evidence.

JUDGE SMITH: The same objection, if your Honor please.

I received them from my own mail box, from the mailman, he delivers our mail right to our house.

THE COURT: Was this letter authorized by the Company?

MR. WHEELER: We will follow that up by proof, if it is necessary to prove Sidebotham's signature.

THE COURT: If you expect to show it, it will be over-ruled.

THE COURT: Objection overruled.

Exception noted.

Whereupon said Exhibit Number 59 was received in evidence and is in words and figures as follows, to-wit: Ex. 59 Plff.

(Envelope addressed:)

Mrs. Alice M. Descelles,  
Havre, Montana.

Two cent U. S. Postage Stamp, cancelled.

Post marked: Great Falls, Mont., Sept. 29,-13 4  
P. M.

Ex. 60 as follows:

NORTHWESTERN TRUSTEE COMPANY

Letter head.

Great Falls, Montana.

Sep. 29, 1913.

Dear Sirs:

We beg leave to call your attention to the fact that the Home Building Department of the Northwestern Trustee Company is now ready for operation. Enclosed you will find a circular on the Certified Guaranteed Notes.

The Company, in this plan, will pay you 6% on your savings, 4% 90 days, 5% 6 months to one year.

The certified Guaranteed Notes are as safe as the savings bank and behind each note issued is deposited first mortgages upon real estate of twice the valuation of the Certified Guaranteed Notes.

You will probably be interested to know that the Company has purchased a tract of ground at the southeast corner of Second Avenue and Eighth Street North. The size of the plat of ground is 75x100 feet. The Company proposes to improve this property in the near future with an up-to-date, modern apartment house.

The Company's stock is selling rapidly at \$20.00 per share, and we will appreciate your sending in the name of three friends who might be interested in either the certified Guaranteed Notes or stock of this Company..

Co-operation is the explanation of efficiency with the Northwest Trustee Company, and your co-operation with us will assist materially in making a greater success of what is to be the strongest concern of its kind in the entire Northwest. In options, contracts, notes receivable, cash and real estate, this Company now has over \$585,000,000. We are also in position to make farm loans on farm property.

Thanking you for your co-operation, we are

Very truly yours,

NORTHWESTERN TRUSTEE COMPANY.

Robert R. Sidebotham,

President.

Whereupon Plaintiff's Exhibit Number 61 was re-

ceived in evidence, and is in words and figures as follows: to-wit:

CERTIFIED  
GUARANTEED  
NOTES  
Issued by  
NORTHWESTERN TRUSTEE  
COMPANY. 6%  
CAPITAL STOCK AND SURPLUS  
Over  
\$500,000.00  
BUILDERS OF MONTANA

— — —

BUSINESS BUILDINGS, HOMES  
RANCHES & FARM LOANS.  
CERTIFIED GUARANTEED NOTES

Issued by  
NORTHWESTERN TRUSTEE COMPANY  
Certified by Conrad Banking Co., and secured  
by First Mortgages on Great Falls or  
other Montana Real Estate.

— — —

SAFETY AND EARNING POWER

are the two important factors to be considered in any investment.

These are the foundation stones upon which the Northwestern Trustee Company builds its business now and in the future.

The basis of wealth of the world over is computed on land. Your security is founded on this values.

## SAFETY FIRST

With an authorized capital and surplus of over \$500,000.00 the Northwestern Trustee Company has by far the strongest personnel of any corporation of a similar kind in the State of Montana, and offers an investment which has all the safe-guards that a sound investment should have.

CERTIFIED GUARANTEED NOTES will pay you nearly double the amount of interest paid by savings Banks with practically the same security.

Certified Guaranteed Notes are secured by mortgages on 50% of the valuation of high-grade properties which are passed upon by the Board of Directors of the Northwestern Trustee Co. and the Advisory Board before any loans are allowed, thereby insuring that each loan is made on the most conservative basis.

Certified Guaranteed Notes paying 6% are as safe an investment as can be made, and are an ideal form of savings funds for widows, orphans, or anyone requiring the highest degrees of safety.

Certified Guaranteed Notes, bearing 6% interest yearly, payable quarterly, can be bought for a period of from 90 days to 20 years.

90 days to 120 day Certified Guaranteed Note bears 4% interest; 120 day to 360 day Certified Guaranteed Note bears 5% interest; 360 day upward Certified Guaranteed Note bears 6% interest.

Great care is exercised that the properties back of these mortgages are such that they are steadily increasing in values, thereby insuring a greater



margin of safety to the investor in Certified Guaranteed Notes.

— — —

NORTHWESTERN TRUSTEE COMPANY

Great Falls, Montana.

(On the back is a trade mark:)

NORTHWESTERN TRUSTEE COMPANY

GREAT FALLS, MONTANA.

SECURITY CONTROL INCOME (N. T. Co.)

Plaintiff's Exhibit 64 is from the Northwestern Trustee Company. I received that through the mails. The mail carrier took it to my house, through the Havre postoffice, and contained in that were those letters. Exhibits, 63, 65, 66, and 67, were contained in the envelop marked number 64. They were turned over by me to Mr. Paisley.

MR. MURPHY: I offer Exhibit 63, 64, 65, 66 and 67 in evidence.

JUDGE SMITH: I object to them because they are not properly identified, there is no testimony that the postoffice establishment was employed in their transmission either by depositing the letter or taking it up, or anything to indicate that the Post-office establishment of the United States was used in transmitting this letter; further, it has not been shown that they were authorized by the Northwestern Trustee Company, or any of the officers.

THE COURT: Do you propose to introduce such evidence?

MR. MURPHY: With reference to some of those

very letters there is a specific minute of the Company.

THE COURT: We are speaking of this particular one now.

MR. MURPHY: I am talking about this particular one here, there is more than one here.

THE COURT: Very well. The objection will be over-ruled, and the exception will be noted, at the close of the case, if the evidence is not sufficient, it can be brought to the attention of the Court. Objection over-ruled.

Exception noted.

Whereupon Plaintiff's Exhibit 64 was received in evidence and is in words and figures as follows, to wit:

MR. WHEELER: In order that the Court will understand, on one proposition, I would like to call the Courts attention to this minute of March 20th, 1914. It was moved by Mr. Alderson that the Company shall pay one-half of the expense of reproducing fac-simile letters from common stockholders, the idea being that a portion of these letters shall be used by the Fiscal Agency in promoting sales of the capital stock, the other one-half to be used by the Company itself to submit to the various stockholders and to assist in the collection of its notes. Which said motion was duly seconded by Mr. Rae. A vote being being taken, the motion was declared carried by unanimous vote. Now, the books themselves show that these men were prominent stockholders.

MR. MURPHY: That is dated March 19th, and the postmark is April 4th, 1914.

WHEREUPON Plaintiff's Exhibit 63 was received in evidence and is in words and figures as follows, to-wit:

Ex. 64 Pltf.

NAME in full.....

Street Address.....

City .....

State .....

Ocupation and Title.....

Ex. 64 Plff. An envelope endorsed:

NORTHWESTERN TRUSTEE COMPANY

General Offices

Great Falls, Montana.

Mrs. Alice M. Decelles,

Havre,

Montana.

Two cent U. S. Postage stamp, cancelled.

Post marked Great Falls, Mont., Apr. 4—14.

4 P. M.

Whereupon Plaintiff's Exhibit 65 was received in evidence and is in words and figures as follows, to-wit:

Ex. 65-A Plff.

NORTHWESTERN TRUSTEE COMPANY

Incorporated

Authorized Capital Stock and Surplus

\$500,000.00

BONDS AND

FARM MORTGAGE

INVESTMENT SECURITIES

LOANS

SIEDEBOTHAM & WILMOT

Sole Fiscal Agents

General Offices, Tod Bldg.

Great Falls, Montana

April 4, 1914.

To the Stockholders

of the Northwestern Trustee Co.:

At a recent meeting of our Board of Directors some of the most prominent men in Montana were elected officers and directors, among whom are State Treasurer, Wm. C. Rae, elected Secretary and Treasurer and member of the Executive Board, Ex-Lieutenant-Governor W. R. Allen, President of the Montana Fire-Insurance Company, and who holds many other prominent positions of trust, elected Director and one of the Vice Presidents, Albert G. Karcher, President Leidholm-Karcher Clothing Co. elected Director, Ex-Mayor of Great Falls and well-known attorney J. W. Speer elected Directors, Vice-President, and member of the Executive Board, L. W. Gibson a prominent and well-stockman of Glasgow, elected a member of the Board of Directors and the writer was elected President, Director and member of the Executive Board.

We feel that the Northwestern Trustee Company has a very strong Board of Directors as these men have been eminently successful in their undertakings in the State and are men of high financial standing, honor and integrity. With these men putting their shoulder to the wheel, we feel optimistic and certain about the future of the institution, which has al-

ready been built up to a point where there no longer remains a question mark, with its large amount of sound assets.

The Board of Directors have pledged themselves to work harmoniously and do everything in their power to aid selling stock and to complete the financing. Their policy will be to keep down the cost of operation and safety will be their first consideration in the investment of the funds of the Company.

The greatest good to the State of Montana and to the Northwest is money to loan secured by mortgage on real estate and since the beginning of time, such security has been the most reliable and satisfactory. The ready sale in the East of farm mortgages at five and six per cent gives a Farm Mortgage Company unusual opportunity to turn its capital several times a year, making two per cent and better each time it is turned.

With interest rates in Montana ranging from eight per cent upwards, we feel that this institution should earn good dividends, as companies similar to this have been able to turn their capital eight to twelve times a year, realizing two per cent and better on each turn.

We ask your co-operation and would appreciate your writing us a few lines in the form of a letter that might be issued for the purpose of assisting us in the sale of stock and in further financing this Company. If every stockholder will speak a good word and pull with us, there is no question but that



in a very short time, this Company will be classed as one of Montana's strongest financial institutions.

If there is any point you do not fully understand concerning this Company kindly advise us and we will be glad to supply you with the information.

Thanking you again for such co-operation as you may be able to give us, we are

Very truly yours,

NORTHWESTERN TRUSTEE COMPANY

A. M. Alderson, President.

Kindly fill in the enclosed card, as we are desirous of having full record of all our stock-holders and subscribers.

Whereupon Plaintiff's Exhibit Number 66 was received in evidence and is in words and figures as follows, To-wit:

Ex. 66.

MONTANA STATE FAIR

A. J. Breitenstein, Secy.

Helena, Mont.

March sixth 1914.

Mr. Robt. R. Sidebotham, Pres.,

Northwestern Trustee Company.

Great Falls, Montana.

My dear Sir:

For the past year have been conversant with the functions of the Northwestern Trustee Company, and to one who has had the interests of the development of Montana at heart, can only add that the administrations of your firm, especially mortgage loans, is something that should help wonderfully

in this state's development. The earnings of the investor, as well as the material assistance to the borrower, are two great factors to the prosperity of any community and as this is your company's plans, I am sure that nothing but success can follow it.

Very truly yours,

A. J. Breitenstein,

Secretary.

Whereupon Plaintiff's Exhibit 67 was received in evidence and is in words and figures as follows, to-wit:

J. W. Speer

Attorney at Law

First National Bank Bldg.,

Great Falls,

Montana.

Mr. R. R. Sidebotham,

President—Northwestern Trustee Co.,

Great Falls, Montana.

Dear Sir:

I am very glad to give my view on the Northwestern Trustee Company, and since its inception here I have been much interested in it. I know of no institution in Great Falls today that has the number of local people behind it as stockholders as your institution has. I believe that you have some 126 Great Falls stockholders which speaks for itself, and shows the confidence of our people here.

Amortgage loan company such as yours and operated along the lines you have carefully planned should be of great benefit to Montana, and at the

same time be very profitable to the stockholders.

I am very well satisfied with my investment, and can see a great future for your institution here, and my only wish is that I will be in a position to avail myself to become a larger stockholder in the future.

With best wishes, I am

Veery truly yours,

J. W. Speer.

I got Exhibit 68, the envelop, and letters marked Exhibit 69, 70, 71 and 72 through the mails. They were delivered to my house from the mailman, from the United States Postoffice at Havre, Montana. And they were contained in the envelop marked Plaintiff's Exhibit 68, and they were turned over by me to Mr. Paisley.

MR. MURPHY: I offer Exhibit 68 and 72 both inslusive in exidence.

JUDGE SMITH: I object to them for the same reason urged to the last one.

THE COURT: They will all be overruled and an exception noted.

Whereupon said Exhibit 68 was received in evidence and is in words and figures as follows, to-wit:

Envelope with two-cent postage stamp cancelled postmarked Great Falls, Montana, Jun. 2, 14- 7-PM, addressed to Mrs. & Mrs. Gus Decelle, Havre, Montana, from Northwestern Trustee Company, General Offices, Great Falls, Montana.

Whereupon Exhibit 69 was received in evidence and is in words and figures as follows, to-wit:

NORTHWESTERN TRUSTEE COMPANY

(Incorporated)

Authorized Capital Stock and Surplus

\$500,000.00.

SIDEBOTHAM & WILMOT

Sole Fiscal Agents

Bonds and

Farm Mortgage

Investment Securities

Loans.

General Offices, Tod Bldg.

Great Falls, Montana.

June 1, 1914.

TO THE STOCKHOLDER OR SUBSCRIBER  
ADDRESSED:

The Company is making much progress. The Fiscal Agents' Department has brought into the Company over 75 new stockholders in the last 30 to 40 days, and at no time in the history of the institution has our business looked more promising.

The funds of the Company are being loaned solely on first mortgages as fast as they are paid in, and under our system of loaning it is necessary that 5 stockholders in the community where the loan is granted shall send us a written appraisal of the value of the property, and no loans shall be granted for more than 40% of a salable valuation of said property.

The Company is now operating its business at a very economical cost. None of the officers or directors are under salary and the only fixed charge is that of our bookkeeper and stenographer, which is \$100.00 per month, and office rent, which now

amounts to \$15.00 per month.

Your earnest co-operation is respectfully solicited in assisting us and the Fiscal Agents in the sale of stock and in making collections due us from subscribers. There are now over 450 stockholders and subscribers and we are in position to make loans.

Enclosed you will find a card which we are desirous of having you fill out, if you have not already done so, which will give us complete information as to your address and occupation. A great many of the stockholders have written us complimentary letters as to their views of the Company and these letters are of much benefit to the institution.

Thanking you again for your earnest co-operation, we are,

Yours very truly

NORTHWESTERN TRUSTEE COMPANY

Per A. M. Alderson,

President

C.

Whereupon Exhibit 70 was received in evidence and is in words and figures as follows, to-wit:

(Illustration of Capitol)      The State of Montana.

Wm. C. Rae, Treasurer,      Treasurer's Office

Helena

February 7, 1913.

Mr. Robert R. Sidebotham,

Northwestern Trustee Company,

Great Falls, Montana.

My dear Mr. Sidebotham:

It is a matter of common knowledge among busi-



ness men and investors generously that a far mortgage loan company of high grade, clean standing, such a yours, offers an avenue for investment that is at once the safest and most remunerative of any business to which the investor does not devote his entire time, intelligence and energy. The land being the original source of all wealth, is the safest security for loans. The ready sale in the east of farm mortgages at five and six per cent gives a farm mortgage company unusual opportunity to turn its capital several times a year, making two per cent and a better each time it is turned. I am highly pleased with my interests in the Northwestern Trustee Company.

Very truly yours,

Wm. C. Rae,  
State Treasurer.

Whereupon Exhibit 71 was received in evidence and is in words and figures as follows, to-wit:

# STATE OF MONTANA

Office of

Secretary of State

A. M. Alderson, Secretary

Copeland C. Burg, Deputy

1-27-14.

Mr. Robert R. Sidebotham, President,

Northern Trustee Company,

Great Falls, Montana.

My dear Mr. Sidebotham:—

I learn with pleasure of the substantial progress made by the Northwestern Trustee Company, in

which I am very much interested. All alert investors realize that no business offers opportunities so great in a rapidly developing State, such as Montana, as is offered by mortgagee loan company. The rapidity with which capital may be turned, and the absolute safety of investments, combine to make the farm mortgage loan business exceptionally attractive.

It is a fact supported by reports and statistics, that large mortgage loan companies of the East conduct their business at an expense of a fraction of one per cent. The New York Life Insurance Company's last report shows that on farm mortgage loans the company made a new earning of 5.58 per cent. This earning was made in portions of the country where interest rates are low and the company did not turn their loans, but retained them as a permanent investment.

In the State like Montana, where interest rates are much greater than in other portions of the country, a company making farm mortgage loans and turning them rapidly into eastern channels at much lower rates of interest, cannot help but prove eminently successful. This is true especially where the loans are carefully investigated and subject to several checkings, as is the policy of this Company.

Wishing you continued success, I beg to remain

Very truly yours,

A. M. ALDERSON.

Whereupon Exhibit 72 was received in evidence and is in words and figures as follows, to-wit:

Ex. 72 Plff.

B. F. Olden, President

Feo. W. Green, Vice, President

John D. Daly, Vice Presideent

J. W. Robinson, Cashier

Chas. A. Cairns, Asst. Cashier

Fay D. Young, Asst. Cashier

IDAHO TRUST and SAVINGS BANK

Capital \$200,000.00

Boise, Idaho.

March 7th, 1914.

Mr. Roberet R. Sidebotham,

Vice Pres. Northwestern Trustee Co.,

Great Falls, Montana.

Dear Mr. Sidebotham:

It is indeed gratifying to me, as a stockholder, to learn from time to time of the splendid success that is being made by the Northwestern Trustee Company. The great demand for foreign capital to develop our farm lands on a farm mortgage loan basis is self evident everywhere in the Northwest.

I understand that there are over 300 stockholders in your Company today, for this, and the high character of the men behind it, you and Mr. Wilmot, as Fiscal Agents, are certainly to be congratulated.

In the near future, the Northwestern Trustee Company should be a strong financial institution

and would be pleased to know of your splendid company as well.

With kind regards, I am

Very truly yours,

Fay D. Young.

F. D. Y.—M.

I have seen Plaintiff's Exhibit 22 before. I received it from the Havre Postoffice. It was delivered to our house by the mail man, as the other exhibits were and I turned it vore to Mr. Paisley.

MR. MURPHY: I offer Exhibit 22 in evidence.

MR. SMITH: The same objection, you Honor.

THE COURT: Over-ruled, exception may be noted.

Whereupon Plaintiff's Exhibit 22 was introduced in evidence and read as follows:

(Here insert Exhibit 22,—Montana Development Bulletin, Northwestern Trustee Company).  
received Exhibits 73 and 74 through the mail. That was contained in Exhibit 73 and delivered to me as the other Exhibits that have been testified to, by the mailman, I never got any any other way.

MR. MURPHY: We offer exhibits 73 and 74 in evidence.

JUDGE SMITH: Same bpjection.

THE COURT: Objections will be overruled.

Exception noted.

Whereupon said Exhibit 73 was received in evidence, and is in words and figures as follows, to-wit:

SIDEBOTHAM & WILMOT, Fiscal Agents,

NORTHWESTERN TRUSTEE COMPANY

General Offices

Great Falls, Montana.

Post Marked Great Falls, Mont.

Mrs. Alice M. Deselles,

Havre,

Montana.

One cent U. S. Postage Stamp. Cancelled.

Exhibit 74, bears on the front page reproduction photographs of A. M. Alderson, R. R. Sidebotham, William C. Rae, J. G. G. Wilmot, Mr. A. M. Alderson president of the Northwestern Trustee Company of Great Falls. Mr. Alderson is secretary of State. R. R. Sidebotham, founder and first vice-president of the Northwestern Trustee Company of Great Falls, William C. Rae, Secretary-Treasurer, of the Northwestern Trustee Company of Great Falls, Mr. Rae is treasurer of the State of Montana. J. G. G. Wilmot, chairman executive committee of Board of Directors of Northwestern Trustee Company of Great Falls. Down further is a reproduction of the lobby of the Northwestern Trustee Company's offices in the new Ford building on Third street, North, and the other photograph is the general offices of the Northwestern Trustee Company in the new Ford building on Third Street North. Then, is the first mortgage certificate.

UNITED STATES OF AMERICA

FIRST MORTGAGE CERTIFICATE

6% FIRST MORTGAGE GOLD CERTIFICATE

Series A.



No. 435

\$500.00

Great Falls, Montana, January 20, 1915.

FOR VALUE RECEIVED, the Northwestern Trustee Company, at the office of the Trust Company, St. Paul, Minnesota, will pay to Thomas Moore, or order, Five Hundred Dollars, not later than the twentieth day of January, 1920, and together with interest thereon at the rate of 6% per annum, payable in gold coin of the United States of the present weight and fineness or its equivalent, on the first days of January and July, according to the attached coupons, without deduction or Income Tax.

Payment of this certificate is secured by an actual transfer to the Trustee herein named, of first mortgage loans upon real estate, equal in amount to the first mortgage certificates issued by this Company, certified by said Trustee, and issued and outstanding, which mortgages are a first lien upon real estate appraised for at least twice the amount loaned thereon.

This certificate is not valid or negotiable until authenticated by said Trustee.

This certificate is issued under a certain agreement between the Northwestern Trustee Company at Great Falls, Montana, and the Capital Trustee Company of St. Paul, Minnesota, dated the seventh day of January, 1915, providing for the assignment to the said Capital Trust Company, as Trustee, certain securities, to which agreement, reference is hereby made for the extent to which the issue of

first mortgage certificates has been or may be authorized under said agreement, the nature and extent of the security, the rights and remedies of the holders of said certificates in relation thereto and the terms and conditions upon which said first mortgaged certificates are issued and secured.

(Seal)

NORTHWESTERN TRUSTEE COMPANY.

By A. M. Alderson, President.

Attest:

WM. C. RAE,  
Secretary.

MR. WHEELER: That was at a meeting held in Great Falls, April 14.

THE COURT: It may be a question, as the Court has heretofore said against whom this evidence would be material. I may be material, and entitled to consideration at the end, it will be taken care of by proper instruction. At the present time the objection will be overruled.

Exception noted.

Whereupon Plaintiff's Exhibit 75 was received in evidence and is in words and figures as follows, to-wit:

Ind. Phone 1751.

Bell Phone 167.

BERTOGLIO MERCANTILE CO.

D. G. Bertoglio, Pres. and Mgr.

General Merchandise, Groceries, Meats, Etc.

Imported and Domestic Cheese and Delicacies.

Wholesale and Retail Wines and Liquors.

Meaderville, Montana, February 12, 1914.

Mr. Robert R. Sidebotham,  
Vice President Northwestern Trustee Co.,  
Great Falls, Montana.

Dear Sir:

A few days ago I saw an affidavit made by the Assistant Secretary of the Northwestern Trustee Company, and I am much pleased to know of the progress the Company has made. The affidavit shows that in options, contracts, notes receivable and cash, stock amounting to over \$580,000.00 has been sold. This is, indeed, gratifying and commendable upon the part of yourself and Mr. Wilmot, as Fiscal Agents.

I feel that all of the stockholders will give you their warm support, as the Northwestern Trustee Company has made much more rapid progress than any corporation, to my knowledge, in this State, and I feel that it is only a question of a very short time when the Northwestern Trustee Company will be classed as one of the largest financial institutions in Montana or possibly in the Northwest.

Personally, I am buying all the stock that I can possibly handle and it is my intention in the near future to take a much larger block, and if I can be of any assistance to the Fiscal Agents or the Company, you have but to command me, as I must admit, I have become an enthusiast on the Company.

With best wishes for your continued success, I  
am

Yours very truly,  
D. G. BERTOGLIO.

I received Exhibit 75 through the mail, enclosed in an envelope. It was delivered to me by the mail man in Havre, as the others were. The envelope was addressed to me.

MR. MURPHY: We offer 75 in evidence. That is a letter by Mr. Bertoglio.

JUDGE SMITH: I object to Exhibit 75 for the reason that it does not tend in any way to show that there was a conspiracy between the defendants here charged, on any scheme or device to defraud by the use of the mails, or otherwise.

MR. WHEELER: The books of the Company are in evidence, showing that Mr. Bertoglio is a stockholder of the Company, and was at that time.

THE COURT: Well, there will be a question at the last against whom such evidence will be entitled to be considered, and who composed that committee that authorized it.

I recognize Exhibit 76, it was received by me through the United States mail and was enclosed in an envelope. I think it was directed to me and delivered to me by the Post Mail man, the same as the others, we have all our mail delivered that way.

MR. MURPHY: I offer Exhibit 76, which is a Great Falls Tribune reprint, June 25, 1915.

Whereupon Exhibit 76 was received in evidence, and is in words and figures as follows, to-wit:

Great Falls Daily Tribune, December 25, 1915.

MONEY CHEAPER

BUSINESS GOOD

So Declares Manager of Northwestern Trustee

Company on Return from New York trip.

Declaring general business conditions in the East are better than for a period of years, R. R. Sidebotham, vice-president and general manager of the Northwestern Trustee Company, returned yesterday from an extended business trip to the Twin Cities, Chicago, New York and Philadelphia. Mr. Sidebotham was particularly well pleased with conditions as he found them in financial circles, and he says the eastern money concerns are beginning to turn their attention to the state of Montana and to consider the purchase of sizeable blocks of farm mortgages from this state. He says money is plentiful and cheaper, commercial loans running as low as three per cent.

“Ammunition factories, steel mills and other industrial concerns are working night and day to meet the demands of the trade and are even then unable to keep up with the orders,” said Mr. Sidebotham. “Money is cheaper in the eastern markets than it has been for years and commercial loans are being negotiated as low as three per cent.

“An especially interesting fact is the tendency of the large insurance companies to take Montana securities. Many contemplate taking on of the first time large blocks of Montana mortgages for investment, and I look to see a very satisfactory business from that source during the coming year. Without doubt the remarkable showing our state has made in crop production in the past year has gained the recognition for Montana as an agricultural state.



“There is another force at work, however, which is worthy of mention. The Montana mortgage loan companies are doing a very good work in educating the eastern investors in the actual conditions that exist here and the real worth of our mortgages as investment propositions.”

Plaintiff's Exhibits 77 and 78 were received by me through the U. S. Mail. They were delivered to me by the mail man in Havre the same as the other mail. Exhibit 78 was contained in this envelope. I am sure it was, I think it was, it had an envelope.

JUDGE SMITH: The same objection.

THE COURT: Overruled.

Exception noted.

Whereupon Plaintiff's Exhibit 77 was received in evidence and is in words and figures as follows, to-wit:

Envelope — Cancelled two-cent stamp: Post marked Great Falls, Montana, August 16, 1915. Addressed to MRS. ALICE M. DESCELLES, HAVRE, MONTANA: from NORTHWESTERN TRUSTEE COMPANY, General Offices, Great Falls.

Plaintiff's Exhibit—No. 78.

Montana's Greatest Daily Newspaper, The GREAT FALLS TRIBUNE. Established May 16, 1887, has the following on August 12, 1915.

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ALDERSON HEADS TRUSTEE COMPANY.  
Local Corporation Holds Annual Meeting and  
Election and Hears Reports on Business.

At the meeting of the stockholders of the Northwestern Trustee Company held in Great Falls last evening, at 7:30, the following directors were elected for the coming year: A. M. Alderson, of Helena; Wm. C. Rae, of Helena; R. R. Sidebotham, of Great Falls; J. G. G. Wilmot, of Great Falls; J. W. Speer, of Great Falls; J. A. Samson, of Whitefish; D. G. Bertoglio, of Butte.

Following the stockholders meeting the board of directors convened and the following officers were elected for the ensuing year: A. M. Alderson, president; R. R. Sidebotham, first vice president; J. W. Speer, second vice president; D. G. Bertoglio, third vice president; J. A. Sampson, fourth vice president; J. G. G. Wilmot, chairman executive committee; Wm. C. Rae, secretary-treasurer, and M. A. Cort, Assistant Secretary-Treasurer.

A large and enthusiastic representation of Great Falls stockholders were present and a number from over the state. No change was made in the officers and directors of last year excepting the election of J. A. Samson of Whitefish, who succeeded the retiring director, W. R. Allen.

The business of the company was discussed fully and the stockholders present expressed themselves as well pleased with the treasurer's report and with the progress that has been made during the past year. One of the items which was pleasing was the fact that in the surplus and undivided profit account the report shows over \$17,000.

"The Company is now carrying on a very satis-

factory loan business in many of the best agricultural sections in Montana," said Mr. Sidebotham.

Among the directors elected, Mr. Alderson is Secretary of State, Mr. Rae is State Treasurer and Mr. Sidebotham is the founder of the company.

PLAINTIFF'S EXHIBIT NO. 79.

NORTHWESTERN TRUSTEE COMPANY.

(Incorporated.)

AUTHORIZED CAPITAL STOCK AND SUR-  
PLUS OVER \$500,000.00.

HOME OFFICE GREAT FALLS, MONTANA.  
Branch Offices in Principal Cities and Towns in  
Montana.

BOND, MORTGAGE AND INVESTMENT  
SECURITIES.

HON. A. M. ALDERSON, President.

ROBT. R. SIDEBOTHAM, Vice-President.

D. G. BERTOGLIO, Vice-President.

W. R. ALLEN, Vice-President.

J. W. Speer, Vice-President.

WM. C. RAE, Secretary and Treasurer.

J. G. G. WILMOT, Chairman.

J. HENRY EVERS, Director.

B. W. PORTER, Director.

W. A. PATTERSON, Director.

L. W. GIBSON, Director.

HENRY A. MEYER, Director.

ALBERT G. KARCHER, Director.

Great Falls, Montana, July 24, 1915.

Dear Sir:

Enclosed you will find a reproduction from an

article published in the Great Falls Tribune of recent date, which will give you some idea of the development of our institution. Your earnest co-operation is solicited at this time.

We have funds in the treasury for farm loans, and if you or any of your friends wish a loan, kindly write us.

In the past few weeks many new stockholders have been added and there are today over 500 stockholders.

Yours very truly,

NORTHWESTERN TRUSTEE CO.

Per Wm. C. Rae, Sec. and Treas.

Plaintiff's Exhibit 79, 80 and 81 came in the United States mail the same as the rest I received, I received them through the mail from the Postman in Havre. Exhibits 79 and 80 were enclosed in 81, and they were delivered to Mr. Paisley by me afterwards.

MR. MURPHY: I offer Exhibits 79, 80 and 81.

JUDGE SMITH: We interpose the same objection, if Your Honor please.

THE COURT: Overruled.

Exception noted.

Whereupon Plaintiff's Exhibit 81 was received in evidence, and is in words and figures as follows, to-wit:

Envelope with two-cent postage stamp cancelled, postmarked Great Falls, Mont., July 25-14, 7PM, addressed to Mrs. Alice M. Descelles, Havre, Mont., from Northwestern Trustee Company, General Of-

fices, Great Falls, Montana.

Whereupon Plaintiff's Exhibit 80 was received in evidence, and is in words and figures, as follows, to-wit:

WHAT MONTANA'S BEST NEWS-  
PAPER SAYS OF THE NORTH-  
WESTERN TRUSTEE CO.  
THE GREAT FALLS DAILY TRIBUNE  
Established May 16,  
1887.

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The Tribune of July 11, 1914, has the following:  
GROWING INTO STATE-  
WIDE CONCERN

---

Local Mortgage Institutions be-  
coming Organized all over  
State of Montana.  
666

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Robert R. Sidebotham, vice president of the Northwestern Trustee Company, returned yesterday from an extended trip over the state in the interests of the Company, and when interviewed by the Tribune, Mr. Sidebotham said, "We are rapidly organizing our institution in nearly every section of Montana. We have today over 500 stockholders and subscribers and have local loan boards in nearly 100 communities.

We are developing our institution along the lines of the old-time banks of Germany and France. Un-



der the system we appoint in each community a local loan association or board of stockholders, who appraise and handle the loans for their respective communities. This board is made up of ranchers and farmers who are thoroughly familiar with the land and capable of making the best appraisal possible.

This company has already started its operations and is now ready to make loans running from three to ten years. This state can consume nearly \$150,000,000 worth of farm mortgages-loans and it is our plan to get large volumes of eastern and foreign capital and loan it out in Montana at a trifle higher rate of interest.

Land banks have been operated for nearly 150 years in Europe and they have been so successful that a failure never has been recorded and they have become the most successful of banking companies wherever they are operated.

Plaintiff's Exhibits 81, 82, 83 and 84 were sent to me altogether; 83 and 84 were contained in the envelope marked 82. I received them through the U. S. Mail. Delivered by the carrier from the Post Office at Havre with the others.

MR. MURPHY: I offer Exhibits 82, 83 and 84.

JUDGE SMITH: We interpose the same objection.

THE COURT: Objection overruled.

Exception noted.

Whereupon Plaintiff's Exhibit 82 was received

in evidence, and is in words and figures as follows, to-wit:

Envelope with one-cent postage stamp cancelled. Postmarked Great Falls, Mont., date not visible, addressed to Mrs. Alice M. Descelles, Havre, Montana, from Northwestern Trustee Company, General Offices, Great Falls, Montana.

Whereupon Exhibit 83 was received in evidence, and is in words and figures as follows, to-wit:

WHAT THE PAPERS SAY ABOUT THE  
NORTHWESTERN TRUSTEE COMPANY,  
MONTANA'S BIG FARM MORTGAGE  
LOAN INSTITUTION.

TRUSTEE COMPANY GROWING RAPIDLY.

Officers of Great Falls concern Optimistic for  
Future—Rapid Growth.

Kalispell Bee, Tuesday, June 9.

R. R. Sidebotham, Vice President of the Northwestern Trustee Company of Great Falls, and J. G. Wilmot, Chairman of the Board of Directors of the same institution, were in the city last evening, en route from the reservation to Lincoln County.

Mr. Sidebotham states that the trustee company, which is a comparatively new concern, is growing by leaps and bounds, and the officers expect that within a short time it will become the largest land bank in the state. At the present time, it has a total of 450 stockholders, which they expect to make 1,000 in the very near future. In the Kalispell district they have fifty stockholders, which will probably be increased as both Mr. Sidebotham and Mr. Wilmot

expect to spend some time in the valley this summer in the interest of the Company. Through their connections in the east, they are able to secure money at a low rate of interest from farm loans, which they consider is one of the important needs of the state. No loans are made except on the best of security and the most conservative basis, 40 per cent of the valuation being the limit. In this way, farmers are afforded money at a low rate, and at the same time stockholders are afforded a very secure investment which pays a good dividend.

Mr. Sidebotham said: "We are offering money on long time loans, three to ten years, which is of great assistance, especially to homesteaders who are proving up. In each district we create a local loan board, consisting of ranchers, who appraise land in their vicinity.

Whereupon Exhibit 84 was received in evidence, and is in words and figures, as follows, to-wit:

The Helena Independent Established in 1866.

From the Independent May 11, 1914.

**MORTGAGE LOANS DEVELOP MONTANA.**

They are playing important part in building up state, says Great Falls Man.

**BIG RANCHES BEING DIVIDED.**

This Fact is Bringing About a Great Demand for Money in Long Time Loans.

Montana Money Is Being Kept in the State.

"Mortgage loans playing an important part in Montana's development," said Robert R. Sidebotham, vice-president of the Northwestern Trustee

company, of Great Falls, Montana, who is in the city. "In the past few months I have visited many of the agricultural sections of the state.

"Many large ranches are being divided into smaller ranches and many homesteaders are proving up. This is bringing about a great demand for money on long-time loans ranging from three to ten years. Montana today is beginning to supply a great many of these loans through her own home companies.

Is no Experiment.

"The farm mortgage loan business is no experiment in Montana. The business has been monopolized in years past by foreign companies and the people of this state are today realizing the necessity of keeping Montana money at home.

"This class of institutions secure large amounts of capital of insurance companies of the east and other financial institutions desirous of putting money out for a long period of years on first mortgage. We are creating local loan boards in various sections of Montana. These boards consist chiefly of ranchers and farmers of their localities, these ranchers appraising all loans made in their vicinity. These loans may run as long as 20 years with a prepayment option plan to cut down the mortgages at any time.

Montana Is Last State.

"Montana is practically the last state to have mortgage loan companies of this character, or mort-



gage banks as they are called in many sections of the country.

“Bearing in mind that Montana has 30,000,000 acres of farm land with 14,000,000 acres of this amount irrigated or irrigatable and 16,000,000 non-irrigated on a loan basis of \$5 per acre, this land will absorb \$150,000,000 alone, and it is evident that institutions securing large amounts of foreign capital to be used in tilling the soil of Montana should be fostered and encouraged. Many of the best men of the state have joined hands in encouraging the first mortgage development.”

#### CROSS EXAMINATION.

By MR. KELLY: I cannot tell you the date of the visit of Alderson to my home in Havre. It was the second year after I bought the stock. Mr. Alderson said he came on business connected with the Northwestern Trustee Company, but he didn't tell me what it was, Mr. Sidebotham introduced him as Mr. Alderson. He told me that there had been some trouble, and the progress of the company had been slow, but that the new board of directors had been elected, of which he was a member, and that they were going to do the best they could to get, to try to get the stockholders out of this difficulty that they were in, and that they had reduced the expenses of the company, having rented an office which was costing only fifteen dollars a month, and employed just one stenographer, Miss Cort, at a salary of one hundred dollars. And that the new board of directors consisted of Mr. Alderson and



Mr. Rae and the board that was elected at the last meeting were going to do the best they could to get the stockholders a dividend on their investment as soon as they could get to it. He said that it would probably be three years until they could get the company around to pay a dividend. He didn't recommend to me that they were going to pay eight percent right along, or anything of that kind, but the board of directors were going to do the best they could, and that was the purpose of this new board, who had been elected in March, 1914.

#### CROSS-EXAMINATION.

By JUDGE SMITH: The only one with whom I had any relation in connection with the actual purchase of stock was Mr. Henry A. Meyer, and I only met him once. Well, I cannot tell just to the minute how long it took to sell this stock, but he came to my house in the forenoon, and talked to us about it, and then we were to go down town to Mr. Boone's place there, and we were to sign for it. I have never seen Mr. Meyers since. I don't know where he is now. I haven't seen him since that day. Not until I came here.

Mr. Meyer told me that this was the best company in the Northwest; that he thought they had some of the best business men in the State connected with it. He convinced me from his manner and what he said that he really believed that so I believed it. He said that they had in contemplation in the future to sell bonds. I guess that was

one of the objects of the company, it has been so long ago, I can't really remember everything. Mr. Meyer told me that one of the purposes that the Company had in mind was to build houses in the future, or something like that. He mentioned something of that kind, about building houses and buying lots and things like that, and to sell bonds. In fact, he detailed the purposes of the company just about the same as in this literature that I had received. He told me that that was what the company hoped to do. He told me in his judgment the plans that the company had, as mapped out to me would be a success, and that he did not believe it would fail. I can't remember that he mentioned that the company intended after it had sold its capital stock, and had gone upon a working basis to issue certified mortgage notes. He thought that if the company were successful, that I would realize eight per-cent of my stock. Yes, he said he thought it might go beyond that, but that we were to have eight per-cent anyway. He spoke of the prominent men who were connected with the company, and that had some influence on my mind. He named among them Alderson, the Governor, and Senator Gibson, and the business men of Great Falls. I didn't know any of them. I wasn't induced to buy stock on account of the mention of any of the business men of Great Falls, only I supposed it was making it safe, of course. I bought three hundred and thirty-three and a third shares at \$15.00. And it was practically a cash sale. I paid for it within a month or so.

Exhibit 48 contains my signature.

When I signed that paper, Exhibit 85, I knew it was my subscription contract. I saw it and I read it at the time, but I couldn't tell you now what it is about. "It is expressly understood that the par value of this stock is \$10.00 per share," is part of it. I recall it. The selling price is \$15.00 per share, thereby creating a surplus fund. The idea of the surplus being to have the company start in business with a capital and thereby placing the company on a par with other large investment incorporations and banking institutions. When three hundred thousand dollars worth of the capital stock has been sold, a call will be issued and the stockholders will assemble at Great Falls, Montana, and at that time elect a permanent Board of directors and perfect a permanent organization, stock certificates to be delivered when final proof is made. And I hereby agree, that should I fail to pay said notes when due, or to make satisfactory arrangement for the payment of the same, that this subscription should be void at the Option of the Northwestern Trustee Company, and that I shall forfeit to the Northwestern Trustee Company any payments made thereon.

Of course, I couldn't forfeit any payments because my stock was fully paid up.

No agent has authority to vary the terms of this contract, or has the power to bind the Company by any other agreement or by any agreement other than herein set forth.

I knew that was in the contract when I signed it.

My husband was not at that time suffering with this illness that he is now afflicted with, that I know of. I think he was all right. Mr. Descelles did his own business and I don't know anything about his contract, but I think he got the same, he must have.

I don't think that part of it was discussed in our presence between Mr. Meyers and Mr. Descelles. In addition to the statement therein printed, Mr. Meyer told me that the par value was \$10.00. I still own this stock. I don't think anybody first suggested to me that I should, or that I was dissatisfied with my bargain. Well, I heard lots of it right away after that; that there was a question raised about the Northwestern Trustee Company's standing; we signed up, after we sent our money in, but I didn't believe it until after the first year, because everything was so plain to me. Finally I received a circular letter, from the Postoffice headquarters at Spokane, asking me to fill out, among other things, what representations were made and that sort of thing. I filled it in and sent it back. Sent it to Spokane. Sidebotham and Wilmot came to my place sometimes together. Sidebotham, at least, came alone, several times. As a matter of fact, Mr. Ed. Broadwater was a mutual friend of ours. He was a neighbor of ours of course. I live right in the city of Havre. We all went to the Hill County Fair together. It is a fact that neither Sidebotham nor Wilmot nor Alderson had anything to do with the selling to us of this stock. Mr. Meyer sold us



the stock, and these other men, we didn't have anything to do with them in reference to the selling of the stock, until Mr. Sidebotham came afterwards and said it was all right, but that was after we had paid for it. I was not induced to buy this stock or pay for it by any of these letters or circulars that I received through the United States mail. I got them afterwards. I got them all after the stock was entirely paid for, so that it did not influence me in buying the stock. My husband, he had paid for his stock too.

JUDGE SMITH: If Your Honor please, I desire to offer this in evidence on the part of my client exclusively as a part of the cross-examination of this witness. Your Honor can cover that in the instructions.

THE COURT: It will come in the instructions and if you are using it on cross-examination in questioning this witness, if there is anything in it that goes to your benefit, you will get the benefit of it. If there is anything adverse to any of the other Defendants in the case, of course, it will be to their detriment.

I received Defendant's exhibit 86 through the mails also, I don't know who filled it in my handwriting. I think that is one that I received. No, I don't know who filled it in. When I received it, I kept it until I sent it up to the Post Office Inspector. I sent it to Spokane. I think that is the way it was I didn't fill it in and I don't know who did fill that in, but I think that is my banker, Mr.



Rith. He is the one who filled up my paper that I sent to Mr. Paisley; that must be one of them.

Exhibit No. 86.

Post Office Department,  
Spokane, Washington,  
February 1st, 1916.

Alice M. Descelles, Havre, Mont.

Madam:

Please give us the following information as to your business relations with the Northwestern Trustee Company, Great Falls, Montana.

I guess he must have done that.

That is not a true statement. Then is written the figures 334 price per share \$15.00.

Amount of cash paid at the time subscription was taken, five thousand dollars. The answer written there is yes. Then it says, if so, what was the amount, then the figures \$500.00.

Then Q. Have you paid the note in full?

A. Yes.

Q. When?

A. In June, 1913.

Q. Where?

At Havre for three hundred and thirty-four shares. That isn't quite accurate there. Not quite. The price paid per share, Fifteen Dollars, the amount of cash paid at the time subscription was taken, Five Thousand Dollars, that is not quite accurate there. I paid five thousand dollars for it about a month afterwards. I just signed a contract and paid for it about a month afterwards. I am

not just sure the date when. When my interest was due I sent a check to the Northwestern Trustee Company for Five Thousand Dollars. I had some money at interest. I paid it in the bank and got my interest from the bank. I was to receive eight percent interest, but not compound. I never hear compound interest in relation to the matter at all. Payable semi-annually wasn't true. No, it was payable each year.

This is in this paper in writing. They represented the company as being absolutely safe, and that it would receive compound interest at eight percent, payable semi-annually, but to date have not received a cent from them. That was not true. I never gave a note.

Q. If so, what was the amount, \$5,000.00—Have you paid that note in full?

A. Yes sir.

Q. Have you paid any part of the note that is blank?

A. Yes sir.

Q. Have you got it yet?

A. Yes sir.

Q. Has your subscription been cancelled and the note returned?

A. Yes sir.

Q. Then in this paper is the question, "if so, why ....."

Q. And then again "Is subscription cancelled and note returned, was your first cash payment, if any, returned to you ....."

Q. Then again is the question, "Did the agent assure you that you would receive large profits, and it is written in there eight percent and dividends. That wasn't quite true.

A. Something like that, but then I was to have eight per cent for my money, and then I was to have a dividend on all the stock that was raised. I didn't understand it about the eight percent and dividends.

Then the question, "When were you to expect dividends on your stock?" and it is written in there "Semi-annually?"

I don't know where Mr. Rith could have possibly gotten that answer from, I never told him anything like that.

He agreed to take the stock off my hands at any time, and in case of death the money could be had immediately for the heir. He didn't agree to take the stock off my hands at any time, but Mr. Sidebotham said that if I wanted him to sell my stock he would try and sell it. That was after I had the conversation with Mr. Meyer. Yes, long after the conversation with Mr. Meyer, but Mr. Meyer never said he would take the stock off my hands.

I read from Exhibit No. 86, "Please answer each question and place answer after the question on this sheet, or use the back of sheet if necessary, and return to me in the enclosed addressed envelope, which requires no postage. I wish you would send me any letters, circulars, literature, etc., with envelopes and wrappers, which may have been sent you. They will

be carefully preserved and returned to you upon request. This letter is not to be regarded as in any way reflecting upon the character or reliability of the company and should be treated as **STRICTLY CONFIDENTIAL**.

Very respectfully,

ALBERT A. PAISLEY,

Post Office Inspector.

When I went to Mr. Rith, I told him what conversation I had had with Meyer; told him just the same as I told Mr. Wheeler here this afternoon, and this paper is the result of the talk, and you know Mr. Rith posted it for me. Mr. Sidebotham did not make any effort to get me to buy any of this additional stock. No, he never asked me. I don't think Mr. Wilmot did, and Mr. Alderson didn't. I didn't accuse Mr. Alderson, or Mr. Sidebotham, or Mr. Wilmot of making any false representations with reference to stock "Or representations that were not true" in order to induce me to part with money.

Q. Did he say anything that induced you to buy this stock that you know to be false?

A. Why, not Mr. Sidebotham, but Mr. Meyer. Mr. Meyer you think did?

Well, he told me .....

Well, no, only I didn't know Mr. Alderson, and when you really don't know anybody you wouldn't know whether it was really them or not. I didn't know Mr. Meyer either, except that he introduced himself, and when he came to get the money for the stock. That is the first time I ever seen him. He

said he was the Secretary of State and he was Mr. Alderson. Mr. Alderson did. Oh, this is Mr. Meyer that you are talking about. I didn't know him. I never talked much about it, I thought I was stung, so I didn't say much about it.

Q. From whom did you first get the notion that you were stung?

THE COURT: Just a moment. This lady has only testified to certain facts. Her thoughts or conclusions, whether she thought she was stung or not, are of no importance in this case. The Court will not allow the examination to be continued for the purpose of ascertaining her mental attitude. If she were here suing for the recovery of her money, if this is for the purpose of getting that evidence for some future case, I don't say that it is, but it has no bearing on this case. The Court will not permit those questions to be asked and your exception may be noted. Now, proceed. If you have anything further that is material on cross-examination, Proceed.

JUDGE SMITH: Well, will Your Honor allow me to tell you what the purpose of the question was?

THE COURT: It cannot have my purpose in this case, nothing material in this case. She is simply here to identify certain documents, and that she bought certain stock. She didn't say on her direct examination that anybody told her that she was at all dissatisfied or that she was dissatisfied. Proceed.



Exception noted.

I cannot say that Mr. Sidebotham didn't tell me that mortgages for the Company were drawing 8% interest, rather than saying that the stock would. I don't know. He might have said it, but I don't know, it has been a long time, I forget. He said the company's securities were to be in shape of mortgages on land, yes, and buildings and loans. Mr. Wilmot did not tell me that any time I wanted to employ his services to sell the stock, he would sell it for me, or try to sell it for me. Mr. Sidebotham said that. I did not call on them to do that.

Q. Now, these exhibits here that you say you received by mail, I expect you have not an independent recollection of any of them have you, just simply assume that you got a great many of them by mail, and you don't recollect but that you got them all by mail?

I did get them all by mail, because that is the only way I would get them. I don't remember on a certain date, but I got them through the mails.

JUDGE SMITH: No further cross-examination.

Whereupon Court adjourned until Thursday morning, January 18, 1917.

THURSDAY MORNING, January 18th, 1917.

TRIAL RESUMED PURSUANT TO AD-  
JOURNMENT.

PARTIES PRESENT AS BEFORE.

Whereupon W. S. Frary, called as a witness on behalf of the Government, testified as follows:

DIRECT EXAMINATION BY MR. BALDWIN.

My name is W. S. Frary, and I live at Great Falls. I have lived there twenty-five years, and am engaged in the Insurance and real estate an'd farm loan business. Have carried on that business in Great Falls about the same length of time. This business is conducted as Frary and Burlingame. Mr. Burlingame is also a resident of Great Falls. He has lived there, I think, about the same length of time. He is State Senator from Cascade county. He has held that position eight years, I believe. This is his second term.

I am acquainted with Mr. Robert R. Sidebotham, one of the defendants in this case. I first met Mr. Sidebotham with Henry Meyers in 1913, somewhere along in May, in the latter part. They came to our office and wanted to know if we would not be interested; they wanted us to act as agents for them in connection with the Northwestern Trustee Company; to act as fiscal agents, I believe, in selling their stock in Cascade County.

Q. Were any representations made by Mr. Sidebotham or Mr. Meyers in his presence, with reference to the organization of the company, its purposes, etc., as suggested? State what those representations were.

JUDGE SMITH: That is objected to as irrelevant and immaterial and not being any representations or statements made in the Court of negotiations for the purchase of stock, and apparently a matter entirely ~~foreign~~ <sup>foreign</sup> to this inquiry.

THE COURT: It might be admissable against interest. The objection will be overruled.

Exception noted.

He said that he intended to form this company in the interest of building an apartment house and various kinds of buildings in the city of Great Falls, and all the money that was secured from the sale of stock would go for that purpose. I believe he told me the par value of the stock was fifteen dollars. The value of the stock was fifteen dollars. I believe the par value was ten dollars. The stock was to be sold at fifteen dollars. He did not explain why the stock was to be sold at fifteen instead of ten dollars. We entered into a contract with Mr. Sidebotham.

Exhibit 87 for the Plaintiff is the agreement entered into with Robert Sidebotham.

MR. BALDWIN: Now I offer this agreement in evidence. This Exhibit marked 87, Plaintiff.

JUDGE SMITH: The only objection we have to this, if Your Honor please, is that it is incompetent, irrelevant and immaterial.

THE COURT: The objection in behalf of the Defendants Wilmot and Sidebotham is overruled.

Exception taken.

Thereupon Exhibit 87 was read in evidence and is as follows:

THIS AGREEMENT, made and entered into this day of May, 1913, between Robert R. Sidebotham, president of the Northwestern Trustee Company of Great Falls, Montana, party of the

first part, and Frary & Burlingame of Great Falls, Montana, parties of the second part.

Party of the first part this day appoints the parties of the second part as General Agents for the Northwestern Trustee Company in and for the County of Cascade, and for their assistance in making sales and general promoting the welfare of the Northwestern Trustee Company, the party of the first part agrees to pay the sum of  $21\frac{1}{2}\%$  of the selling price of all stock sales consumated by the party of the first part where no other agent lays claim or is entitled to a commission they shall receive a total sum of 10%, the selling price of the stock is \$15.00 per share, terms of sale being 50% cash, 25% in 30 days and 25% in 60 days. Any other terms must be fixed and approved by the party of the first part; 50% of the above named commission payable in cash, and 50% payable in stock of the Northwestern Trustee Company. The above named commissions are due and payable as soon as the above mentioned payments have been received by the party of the first part, which are to be deposited in the name of the Northwestern Trustee Company in the First National Bank of Great Falls.

It is hereby agreed that should either party desire to terminate this agreement they may do so on 60 days written notice, and in that event a complete settlement will be made on the business transacted up to that time.

It is further agreed that this contract shall be in force from this date, and shall not be effective on

sales made prior to this date.

When the sum of \$300,000.00 worth of stock is sold the party of the first part shall call a meeting of the stockholders and at that time they shall elect a permanent Board of Directors and perfect a permanent organization.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals this ..... day of May, 1913.

(Signed) ROBERT R. SIDEBOTHAM. Seal.

(Signed) Frary & Burlingame. Seal.

Witness:

(Signed) Henry A. Meyer.

Nothing whatever was done by myself or Mr. Burlingame under the contract. I can't recall the exact date of the agreement. I think it was somewhere between the 20th and 30th of May. I wouldn't say exactly when, but I rather think along about the 24th day of May, 1913, along the latter part, if I remember right.

Q. Now, Mr. Frary, what was the reason for the failure to comply with all the terms of the contract?

JUDGE SMITH: That is objected to upon the ground that it is incompetent, irrelevant and immaterial.

THE COURT: What is the object of this?

MR. BALDWIN: The object, if Your Honor please, is to show the same representation made by the Defendant as was made to outside parties.

THE COURT: Very well, the objection will be overruled.



Exception noted.

I went to the First National Bank, the conversations were afterwards repeated to Mr. Sidebotham. I said I understood you bought twenty-five thousand dollars worth of stock. After that time, I had a talk with Mr. Sidebotham about the talk I had with Mr. Thornton of the First National Bank of Great Falls, I told Mr. Sidebotham that the First National Bank said they had twenty-five thousand dollars worth of their stock, and I said I told him we didn't have a dollar's worth, and I said I wanted to know why he was telling the First National Bank that. He said he told them that we were to have twenty-five thousand shares. Neither Mr. Burlingame or myself agreed to pay for a single share of stock in the Northwestern Trustee Company. As far as Mr. Burlingame is concerned I wouldn't swear to that; but I don't think so. I never at any time had an option on any of the stock of the Trustee Company. Never. Neither I or the firm ever asked for such an option. Why, Mr. Burlingame didn't like the looks of things and he called Mr. Sidebotham ..... He said he wanted to see their minutes and what they were doing, and somebody brought the minutes over from Butte, and in their minutes they showed who their stockholders were, the different stockholders meeting, and other things, and they showed that they had twenty-five thousand dollars worth of stock optioned through Frary & Burlingame, and Mr. Burlingame immediately told them right there and then that we

didn't have any stock, and that we would never put up a dollar for any; that we didn't want it. We never paid anything for an option on twenty-five hundred shares of stock. Not one cent. Shortly after that, we asked to be released, not having anything more to do with the company, and told Mr. Sidebotham that we didn't want anything more to do with it. I think that Mr. Sidebotham had some conversation regarding the option, but not with me.

Why there was a vote, as shown by the minutes, electing me a director.

Q. Now, Mr. Frary, can you tell us whether you were, without your consent and without your knowledge, elected a Director of this company?

I was. When I say May 29th, I base the statement on a letter received, dated the 28th, and signed Louis D. Haven, Secretary. That is the first knowledge that I had of the fact that I had been elected a Director. The same day, I think on May 29th, I refused to be a director of the Northwestern Trustee Company, by registered mail. Here is a copy of the letter.

The advertisement appearing in the Great Falls Tribune stated that Frary and Burlingame were the Fiscal Agents of the Northwestern Trustee Company. That advertisement was not authorized by the firm of Frary and Burlingame. I asked Mr. Sidebotham to discontinue it. I couldn't say what his reply was. Senator Burlingame and I were not advertised as Directors of the Company in the paper at that time. Senator Burlingame is at the

hotel, in his room, suffering from a broken ankle received last night.

### CROSS-EXAMINATION.

By JUDGE SMITH: The business of the firm of Frary and Burlingame is real estate, insurance and farm loans. We are in the farm loan business and have been for a great many years. Mr. Sidebotham came to our office in company with Henry Meyer. Mr. Sidebotham came with him. Meyers was with him at the time they were at our office. Mr. Meyers was a friend of Mr. Burlingame's, not of mine. He was the man who used to run the Helena Hotel here and the Grandon Hotel. They were there at different times, I think, two or three different times, I don't know whether both of us were there at the time or not; but I think so at different times. Sidebotham said he intended to promote a company for the building of buildings in Great Falls, apartment houses. I entered into this contract. Well, I don't know whether I signed it nor Burlingame. I can tell by looking at it. I signed it. That is my signature. Frary and Burlingame never had any option on any stock in this company. I never saw the option. I heard of it when it was read in the minutes. I think it was in our office when we brought the minutes over there. It was read one evening in our office. Our office was in the First National Bank building.

The Trustee Company didn't have an office in Great Falls at the time—they just started in—they had an office with us. The minutes were read there

in our office, to Mr. Burlingame and myself. I refused to take an option. I cannot account in any for the existence of that minute and of their showing that I had an option. They remained in our office, well I should judge, very close to a month. I never did anything for them. I didn't have a disagreement with them on account of the fact that I hadn't done anything under the contract. While I had that contract, I took Sidebotham down to Great Falls, and I introduced him to two or three Great Falls men. One of them was Mr. Grogan and I don't know who the other man was. I know I went out with him that afternoon. Mr. Grogan was a lumber man. I did not make any claim for services, for office rent or anything of that kind. We never made any claim for services. We settled with them. They settled with us for the rent by giving Burlingame ten shares of stock in the Trustee Company. I haven't got it yet, Mr. Burlingame has his. Mr. Burlingame is not a stockholder from in July some time. Why, I understood that we were to be the Fiscal Agents as to the handling of all stocks in Cascade County, is all I understood. On account of the agency that arises out of this contract, we were fiscal agents for about a month. I got ten and Mr. Burlingame got ten shares of stock of the par value of \$10.00, and the selling price at that time had been fixed at Fifteen Dollars, so that we got Three Hundred Dollars worth of stock for thirty days office rent; that was the going price. Well, according to our contract, I suppose it was a settle-



ment of our contract. I think that at that time, we were paying for the lease about \$65.00 a month.

I remember when Sidebotham was arraigned, I fixed his bail at twelve thousand five hundred dollars.

### RE-DIRECT EXAMINATION.

By MR. BALDWIN: The ten shares of capital stock in this company given to me and the ten shares given to Mr. Burlingame was about the fifth day of July, 1913. I think after we had severed all connections. I did not have a share in the company prior to that time, July 5, 1913. I don't think that Mr. Burlingame did either. I didn't have any shares except the ten shares delivered on that day. Mr. Burlingame has some conversation with Mr. Sidebotham in my presence with reference to Mr. Sidebotham's representations that our firm held an option on twenty-five hundred shares of stock in the Northwestern Trustee Company. He told him that we didn't have any stock, nor any option on any of his stock, and didn't want any.

### Re-Cross Examination by Judge Smith.

I didn't send out a letter or circular of some kind to numerous men in Great Falls, saying that I had investigated Mr. Sidebotham and his company and considered I did right and gave him a good send-off. I didn't do anything in substance like that. I didn't do anything more than take him around to Grogan and some other man. I have no feeling against him at this time, none whatever.



## CROSS-EXAMINATION BY MR. GALEN.

I sold my stock the next day. I got a hundred dollars. Mr. Atkinson sold it the next day, it was delivered to me. My stock was sold for ten dollars. I got ten dollars net out of it.

Whereupon Louis Newman, called and sworn as a witness on behalf of the Government, testified as follows:

## DIRECT EXAMINATION.

By MR. WHEELER: My name is Louis Newman. My business is News and Lunch Room contracts. I was elected President of the Northwestern Trustee Company last September, subsequent to the time that the indictments were returned in this case. I was not formerly a Director of this company. I had ten shares of stock and was elected a Director, but did not serve.

Q. Now, did you have any conversation with Mr. Sidebotham or Mr. Wilmot, or any of the officers or Directors of the company at any time, as for or as to your reason for refusing to serve as a Director?

JUDGE SMITH: That is objected to as immaterial and irrelevant. It is just simply a declaration made from hearsay.

THE COURT: I assume that counsel has something material in the way of admission by the defendants, otherwise it will be incompetent. Objection will be overruled.

Exception noted.

I cannot say that I did. After my election as a

Director I immediately addressed the letter to the company.

Q. Did you have any conversation with Mr. Sidebotham and tell him why you refused, or was anything said about it?

JUDGE SMITH: This calls for a mental process, not what Sidebotham said. I object to that.

No sire, I had not.

#### CROSS-EXAMINATION.

By JUDGE CALLOWAY: I am acquainted with a gentleman by the name of J. A. Eba. He resides at Malta, I believe. I had a conversation with him some time in the early part of the year 1915 respecting his ownership of some stock in the company. Mr. Eba had spoken to me about the stock that he had purchased, and was very much displeased with his investment, and wanted some information from me in regard to it, and I advised him to write to Mr. Speer, and he had learned I had become a Director of the company.

When I returned to Great Falls, I had a conversation with Mr. Speer, regarding the talk with Eba. I requested Mr. Speer to write Mr. Eba on the subject. I had no talk with any of the Directors of this Company respecting the matter at all.

MR. WHEELER: One question I overlooked on direct. At the time I was elected a member, or a Director of the company, I made an examination of the books. My recollection is that the Fiscal Agents had advertised that four hundred thousand dollars of the stock had been subscribed, but I found

that there was only about seven thousand dollars in actual money in the Treasury. And the advertisement was to the effect that they had sold, or people had subscribed for four hundred thousand dollars worth of stock. I asked Sidebotham to be shown the books before I decided whether I would serve on the Board or not. I asked that I be permitted to look into the books to see just what the condition of the company was. After seeing the books, I decided not to act.

#### CROSS-EXAMINATION.

By MR. GALEN: The advertisement, as near as I remember it, stated that four hundred thousand dollars, or approximately, had been subscribed. I wouldn't be sure that it did not add in addition, options.

I examined the books of the company after I became President of the Company, at the time that I was elected in 1913. I became the President of the Northwestern Trustee Company in September, 1916, after the indictment in this case had been returned.

The Northwestern Trustee Company is now a going concern for the purpose of its organization. It is at the present building apartment houses, or plans are being prepared now.

The resources of the company at the time that I became President amounted to approximately seventy-two thousand dollars. As President of the Company, I caused, during the last month, a statement of the resources of this corporation to be pub-

lished in the Great Falls Tribune. The statement published or issued last week shows in substance that eighty-four thousand dollars of the stock had been fully paid up and issued, and the resources amounted to seventy-two thousand dollars. That is the substance of the statement. Defendant's Exhibit 88, being a letter dated December 15th, 1916, is a statement prepared by the manager of the company, and myself, and approved by the Board of Directors. This letter correctly states the facts with reference to the present condition of the company. I should say it is very near correct. It is more or less approximate because we have not had the books of the company, which have been in possession of the Court.

MR. GALEN: I now desire to offer Exhibit 88 in evidence.

MR. WHEELER: We object to this statement, may the Court please, it is simply a circular letter sent out to the Directors of the Company, with a lot of immaterial stuff so far as this case is concerned.

THE COURT: You will certainly be privileged to show the condition of the company in the proper way. This statement is self-serving. Of course, it has no place here. The objection will be sustained.

Exception noted.

Since I became the President of the Northwestern Trustee Company, the company has not been in the possession of its books of account, stock subscription books, and other books.

## Cross-Examination.

JUDGE SMITH: Making up the account of seventy-two thousand dollars I have arbitrarily eliminated a great many promissory notes. The face value of those promissory notes is somewhere in the neighborhood of about one hundred and seven<sup>thousand</sup> dollars. Well, we have eliminated the notes receivable for this reason: That is it would be difficult to say whether we have eliminated all of them or not for this reason, that some of the signers of the notes have sent in the balance due on them, that is, in some very few cases, and that from people in our section of Montana who are more or less familiar, or know the personnel of the Board of Directors. Some people have already sent money in, in payment of their notes, either in whole or in part. I think, perhaps, two or three is all. We have not made any effort to enforce collection of any of these notes. I might state that I have expressed my views to the Board of Directors. It is not that I have been instructed by certain officials connected with the prosecution of this case not to try to collect any of these notes, until after this lawsuit is over, or anything in substance like that. I have not brought any actions, or issued any executions, or made any demands, or made any efforts whatever to collect their notes. I could not say how many notes have been paid since the indictment in this case, since I got possession of the books, it would amount to, perhaps, a few hundred dollars. I should say a few hundred dollars had been paid



since the Government got possession of the books. Why, I have not the information here, but when our manager is here, I believe, one of the witnesses, and I guess he will tell you a little closer than I can.

Q. You have made declarations in writing, and otherwise, to the stockholders and the public generally, that your belief is that the purposes for which the company was originally organized will eventually be carried out under your management, haven't you?

MR. WHEELER: That is calling for a conclusion of this witness, pure and simple, for an expression of his views, as to what ultimately will be done.

THE COURT: Yes, that will be the question for the jury to determine, what might be carried out and what might not.

Sustained.

Exception noted.

The statement I made was that while the advertisement stated that about four hundred thousand dollars of the stock had been subscribed, that I found in actual cash only about seven thousand dollars. I find, however, that the four thousand dollars was made up for stock that was contracted for either by subscriptions or options, and in addition to what had been actually sold and delivered, and it was that feature that lead me to not care to serve at that time. I didn't think that the prospects for the successful organization of the company were very good. I have not changed my mind about that, since I have got to be President, and have not so

declared in writing. I want to say that I have not changed my mind since.

### RE-DIRECT EXAMINATION.

By MR. WHEELER: There are seventy-two thousand dollars of assets now of the company. Eighty-four thousand dollars worth of stock, eight thousand four hundred shares. Eight thousand four hundred shares of stock actually paid up. When I am speaking of eighty-four hundred shares of stock that was paid up, I mean that it was paid up at the rate of ten dollars.

Q. Let me ask you if it isn't a fact that a great deal of that stock that was sold going to make up this seventy-two thousand dollars was sold at thirty dollars a share.

MR. KELLY: We object to that as leading, and for the reason that the books of the company are the best in evidence.

THE COURT: Overruled.

Exception noted.

Yes, ten dollars a share. There was a lot of it sold at thirty dollars a share that goes to make up this seventy-two thousand dollars, and some of it at twenty dollars, that goes to make up this seventy-two thousand dollars, and some of it at fifteen, and ~~that were never completed, and that also goes to~~ some of it at ten. There was also paid into the company a lot of money as partial payments on stock ~~that were never completed and that also goes~~ make up this seventy-two thousand dollars.

A number of these notes were eliminated by me, or the present Board of Directors, because in our

judgment, in order to collect these notes lawsuits would perhaps have to be brought in every town of the state. I wouldn't be a party to enforce collection of these notes because some of the stock had been sold at Fifteen Dollars, some at twenty and some at thirty dollars a share.

JUDGE SMITH: On behalf of the Defendants, Sidebotham and Wilmot, we move to strike that answer out, of the witness, because it is an expression of his own individual opinion, and not the action of the company.

THE COURT: Motion denied.

Exception noted.

As to the solvency of the persons who signed the notes, some of them are very good, and, some of them I expect—my judgment is they are not good.

Whereupon CHARLES RIDDIFORD, a witness called and sworn on behalf of the Government, testified as follows:

#### DIRECT EXAMINATION.

By MR. WHEELER: I am a Post Office Inspector, my headquarters are Spokane, Washington, the district over which I have charge includes Montana. I am the Post Office inspector in charge of the Northwestern States, I have been employed in the Post Office service about 20 years, a portion of that time as an inspector and and as Chief Inspector. My duties as such inspector are very numerous, general supervision of all the postal affairs of the district over which I have charge. I am acquainted with Mr. Sidebotham and Mr. Wilmot. I

have met them, I first met them on January 18, 1915, at Great Falls, Montana. I had a conversation with them at that time. On the date I have given I went to the office of the Northwestern Trustee Company, and there first met Mr. Wilmot, I was shown into his private room, there was no one present except he and myself. I informed him that I was a Post Office Inspector, that in the course of my business I had been directed to inquire into the affairs of the Northwestern Trustee Company, it having been charged that the officers were engaged in a scheme to defraud by the use of the U. S. Mail. Mr. Wilmot said, I think you had better see our attorney, who is Governor Norris, or our President, who is Secretary of State, Alderson, of Helena, Montana. I said no, I have just come from an interview with Governor Norris. The papers in the case indicating that he had written the Post Office Department to the effect that he had been informed,—complaint had been made by one White, a former agent of the Company, and now a defendant here, alleging fraudulent use of the mails by the Northwestern Trustee Company, and requesting that in the event that an investigation was had, he, Governor Norris, be interviewed. I informed Mr. Wilmot that I had interviewed Governor Norris; that the Governor had informed me that his connection with the company had only been in the capacity of an attorney, as I understood it, in the preparation of some form of bond, or otherwise, that he had paid one trip to St. Paul on behalf of



the company, but that as to the stock transaction of the concern he knew practically nothing. I then informed him that I had taken up with Governor Norris the matter of the advertisement by this concern, that they had Five Hundred Thousand (\$500,000.00) Dollars in capital and surplus. The Governor said, well, they intended that to mean authorized capital. I said yes, but they don't so state. He said no, that was wrong. I then told Mr. Wilmot that I had taken up with the Governor the matter of the options, and the Governor had said that he had warned the concern against the option proposition. Mr. Wilmot then consented to give me a hearing, and requested me to wait a little while, which I did, and I was then called into the office of Mr. Sidebotham. Mr. Sidebotham with Mr. Wilmot and Mr. Speer were present. I informed,—they all three joined in the conversation more or less, although Messrs. Sidebotham and Wilmot did most of the talking. I informed the gentlemen that complaint had been made alleging fraudulent use of the mail by their concern; that it was based on a number of letters written to the Post Office Department, in which Mr. White insisted that an investigation must immediately be made ..... I stated to these gentlemen the basis of the complaint. Of course, I was there to inquire into the business. I informed them as to the contents of the letters written by Mr. White to the Department. I informed them that Mr. White had said that an immediate investigation should be made, that, if necessary, he intended to



carry the matter to President Wilson. I told them that Mr. White had stated that the concern was a fraudulent one; that he had been induced to sell thousands of dollars worth of stock of the company innocently, unknowingly selling optioned stock which had been optioned to Sidebotham and Wilmot for Ten and Fifteen Dollars a share. That he had sold it to people under misrepresentation for fifteen or twenty dollars. I asked these gentlemen if these statements of Mr. White were true. They stated to me that they were true as to the optioning of the stock. And I asked them why this was done. They claimed to me that the reason for taking options and disposing of the stock in this manner was that the cost of selling stock in Montana, as I must know, was much higher than in other localities, and that it could not be sold, possibly be sold for 25%, and they took this means of getting higher dividends. They said that their means were by optioning to themselves stock at Ten and Fifteen dollars, and then increasing the price of the stock to fifteen and twenty dollars, upon the theory of not only carrying a surplus, but also in order that the optioned stock might realize them more than—the 25% commission which they were presumed to receive. At the time of the first conversation, I asked the gentlemen if they wanted to submit me a statement showing their financial condition including the matter of the optioned stock. They said they did. Subsequently Mr. Speer came to Spokane and had a conversation there with me in my office, in which

he said that he realized that the concern had not been conducted legitimately, that he desired to do what he could do, straightened the matter out, and that he had insisted that all the optioned stock be returned to the Treasury, and that the proceeds of the sale of optioned stock also be returned. I don't remember the date,—but within a short time after my visit to Great Falls.

### CROSS EXAMINATION

MR. McCONNELL:

I got the information from the Department at Washington, the letters were sent to me. I don't remember exactly, but I think there are three or four. My impression is that there are three or four, anyway, three, anyhow. I would say that my impression was still that there were three.

### CROSS EXAMINATION.

BY JUDGE CALLIWAY:

I arrived in Great Falls early in the morning of January 18, 1915 and first called upon Governor Norris. It was stated in his letter to the Department that he was the general attorney for the company. After going over the matter, I then went to the officers of the Northwestern Trustee Company. I was in the Governor's office not to exceed fifteen or twenty minutes at the outside, I should say. I had very little conversation with Governor Norris.

Q. What I had reference to was the conversation you had narrated to Mr. Wilmot in which you said you had a conversation with the Governor, and told him what the Governor told you. That is what I

had in mind. Did you understand me?

I did not, I understand that all of the conversation narrated by me here in the beginning was the Governor, it was not, it was very short. Then I had the conversation with Mr. Wilmot that I have narrated. The first conversation that I had with him took not more than ten minutes, I should say. And thereupon he asked me to wait for some little time. This conversation with Mr. Wilmot was had in the private office of Mr. Wilmot in the office of the Northwestern Trustee Company. I don't know the name of the building, it is up stairs. I did know, however, that they were the offices of the Northwestern Trustee Company. I don't remember exactly how long a time elapsed after the conversation with Mr. Wilmot, and the conversation I had in which Mr. Sidebotham and Speer took part. Of course, I should say approximately, oh, possibly 20 minutes, or a half an hour, I guess. In the same offices, but not in the same room however. My recollection is that Messrs. Sidebotham Wilmot and Speer were there, that I was introduced to Mr. Sidebotham and Mr. Speer by Mr. Wilmot, and I think some lady came in once or twice, possibly when she was called in to get records, but after that I don't remember exactly. My recollection is that I had been talking with Mr. Sidebotham and Wilmot before Mr. Speer came in and Mr. Sidebotham brought in Mr. Speer after this conversation had been going on for a little time and introduced them. As to how long we conversed, oh, this, of course

you understand is nearly as far as I can remember it, about—say three quarters of an hour or an hour. Messrs Sidebotham and Wilmot did most of the taking. There was nothing said there to indicate that Mr. Speer had ever held an option. Not at that time, as I remember it. I understood that Mr. Speer was an attorney for the company, and I only looked upon him or understood that that was his capacity. I don't remember that in the conversation that took place, there was anything to indicate any other relation on his part. I couldn't say definitely, but I should say that it was about a month after that time that Mr. Speer came to Spokane to talk with me, although my recollection at that time may be at fault.

Oh, no, it may have been less than a month, it may have been within a week or so. It was quite prompt. When Mr. Speer came there he advised me that he had told the people that optioned stock should be returned, and be turned back into the company. Mr. Speer did express, as I remember it, a desire to get the concern on a satisfactory and legal basis, and ~~did~~ I think perhaps request suggestions from me in that conversation. I recall that as a part of the conversation; that he asked me to make suggestions that would assist him in that regard, assist the company.

Q. And did you not tell him that he could go back to Great Falls and get these people together, and readjust the company, and get the approval of the State Auditor upon the plan, and then that



would satisfy you?

I may have, of course, in all probability what I would naturally try to do would be **that**. Of course, I had no jurisdiction over the operation of his concern, but that did appear to me that what first should be done would be to have the matter so arranged and submitted as to meet the approval of the State Auditor. I hardly said so in as many words, that I would procure the approval of the State Auditor that that would meet with the approval of the United States who I represented. Under ordinary circumstances, I would not necessarily make such a statement because, of course, it would not necessarily follow that even though a concern might have the approval of the State Auditor, it might not be conducting a legitimate business. I think probably I did suggest to him that he procure the ~~ap~~ approval of the State Auditor upon a readjustment I think possibly it was true that afterwards the approval of the State Auditor upon a readjustment was forwarded to me by Mr. Speer. The entire aim and purpose of Mr. Speer as expressed to me was to comply with your requirements, and the requirements of the postal authorities.

### CROSS EXAMINATION

BY MR. KELLY.

I have seen a copy of that paper, Exhibit 89. Yes, I am quite sure that I did read the article. I don't remember having given out that information to the Spokane Chronicle or to any one for publication in Spokane. I never did tell any representative of any



newspaper that \$300,000 were taken from the public in this alleged swindle. I do not remember telling them that from my investigation that because of the prominence of the men involved in the case, which will be presented to the Grand Jury at Great Falls on June 15th, that it promised to create a political sensation, and its influence is expected to be a big factor in the coming general election in this state. I never gave out such information. All that I remember, I have an indistinct recollection,—of course you understand, we have a reporter in the office every day from every newspaper. One day a reporter came in and brought in one of those large placards with pictures of the concern on, and asked me whether that was the concern with which Sidebotham and Wilmot were connected, who had been arrested and taken before the commissioner. Now, that is my only recollection of any conversation that I may have had with any newspaper man concerning the matter at all. I remember the article of May 12th, 1916, when it was published in the paper. If I read this article, viz., about May 12th, 1916, the day it was published, or the day following, I would have recalled to mind then whether or not I had actually given out this information or any part of it, I think. I didn't recall that I did. The newspapers will get their news from any source possible, and they don't specifically say any particular inspector has given them that information, and, so the newspapers are so prone to make a mountain out of a mole hill, and assume so much that we take but very little notice of

anything we read in the newspapers, Mr. Kelly. And seeing this with large headlines that the Federal Agents see Gigantic Loan Fraud, and that the people had been swindled out of \$300,000.00, it didn't make any impression on me as being a serious matter, either for these defendants that were charged here, Ex-Governor Norris, and other men prominent in this case, and the information coming as purporting to come from—from my office, I being in charge, didn't make an impression on me as a serious matter. Not at all. Upon the presumption that the allegation set forth in the complaint was probably the basis of the articles, namely, and they, that complaint, was, of course, published, probably was a public document at the time, and doubtless contained much of what you are attributing to me or my office. I am talking about the complaint against Wilmot and Sidebotham filed in the office of the Commissioner at Great Falls. I should say not that it was filed after May 12th, 1916. I should say most certainly say that it was prior to that, that is my recollection.

### CROSS EXAMINATION

BY JUDGE SMITH:

I went into Mr. Wilmot's office on January 9, 1915, and Mr. Wilmot did show reluctance in talking to me. He manifested it, sire, with an air of pomposity, in which he said you had better see our attorney Ex-Governor, Norris, or our President, and suggested Secretary of State Alderson at Helena. Attributing or indicating that he was entitled to

great a man, in too great a position to be troubled with a little matter like a complaint from the Post Office Department. Being accustomed to it everyday not resent that imputation. I did not become peeved because he didn't bow to me and bend the knee to my official capacity. It is not especially fixed in my mind that he didn't pay me that deference to which I was entitled. He told me I had better see Gocernor Norris. He said the governor was their attorney. I had been to see Governor Norris first. As stated in my previous testimony, Governor Norris wrote a letter to the department requesting that he be seen concerning the investigation. I do not know how he happened to do that. He didn't tell me how he happened to do it. I had conveyed the information to the governor that I was about to make an investigation. I told Mr. Wilmot that I had taken up with Governor Norris the matter of the five hundredthousand dollar capital advertisement that were carrying. We were alone. Governor Norris told me that they meant authorized capital. He told me that he had told Messrs Sidebotham & Wilmot that the options were disapproved of by him. I couldn't remember the exact words that he used in that connection, but my understanding of his conversation was that they were at least undesirable and questionable. By "questionable" I mean open to question as to the legality. I am stating now my impression of the conversation I had with the governor, not the exact words. You asked me my definition of the word questionable, and I un-

derstood you, and that is the reason I used the word legality, and not as being anything the governor said. I will not say that I didn't use the word legality. I called his attention to the fact that they were advertising that their capital and surplus was in excess of five hundred thousand dollars. Yes, I have the ad here that I showed the Governor. I do not know what the notation is ink is until I look at it. This was received as part of the papers submitted by Mr. White, and, judging from the letter, if the letter of complaint was written by Mr. White, I should say that that notation was also Mr. White's. Subsequently, I talked with Sidebotham, Wilmot and Speer and I discussed with them the same proposition that I discussed with Governor Norris. In that conversation, this matter of truning back the options was not talked of. That was not talked of at all until Mr. Speer got to Spokane. I believe the State Auditor's name was not mentioned in that conversation at all in Great Falls that day. To the best of my knowledge and belief nothing was said as to how the stiuation, as I viewed it, might be remedied. I went there on account of White's complaint. I don't think I showed them Whit's complaint. I wouldn't say positively, but I believe not. I did not arrive at any understanding, or talk, over the matter of the future conduct of the business of the company there that day. I went there to tell them that there were charged with fraudulent use of the mails, that the post office department was investigating it, to request them, if they wished to do



it to assist the department in the investigation. I went to give them an opportunity to assist me if they wanted to. I received no material assistance, any more than their verbal statements, I stayed there about three quarters of an hour, as I recall it. In three quarters of an hour, I did not get all the information I wanted. I have not considerable feeling against Wilmot, on the contrary, I never met the gentlemen but that one day, and question very much if I would know him if I met him on the street. I did remember this pomposity of his, so that I would remember it. When Mr. Speer came to Spokane, I presume that he was there as a representative of the company. It was not my place to arrive at any understanding as the future operations of the concern with Mr. Speer

I suggested to Mr. Spear that he get the approval of State Auditor Keating. As to whether the suggestion was mine, or his, I am unable to state. It was talked over between us. I certainly approved the suggestion. It is not a fact that I suggested it, or that it was understood that, if that problem that was talked over between us was carried out, and the State Auditor's approval gotten, that that would be the end of the investigation.

Plaintiff's Exhibit 90. That is the pamphlet that I called the attention of Sidebotham and Wilmot and Spear to. They acknowledged it as being a publication of the Northwestern Trustee Company.

MR. WHEELER: We now offer in evidence Plaintiff's Exhibit 90. This pamphlet reads as fol-



lows, to-wit:

(Here insert Ex. 90.)

I have seen Exhibits 91, 92, 93. They are the letters of W. W. White, one of the defendants in this case, to which I refer.

Witness excused.

— — —

Whereupon S. DURAND, a witness called and sworn on behalf of the Government, testified as follows:

# DIRECT EXAMINATION.

BY MR. MURPHY:

My name is S. Durand. I live at St. Ignatius Mission; have lived there about 18 years. I am foreman at the Ursuline Sisters' place, have charge of the ranch.

I know Robert R. Sidebotham and J. G. G. Wilmot when I see them. I first saw them in St. Ignatius Mission. St. Ignatius Mission is in Missoula County Montana. I got an idea the first time I see them was in May. I see them after that, the first of July. When I first saw them I had a talk with Mr. Sidebotham. Mr. Wilmot was with him; not when he talked to me. When Mr. Sidebotham talked to me first he discussed the Northwestern Trustee Company with me. He asked me if I wanted to buy some stock, and I told him that I didn't like to, I didn't like to buy any. Anyway, he told me the way it was, it was pretty good, you know, and then I decided to take some. Well, he told me if I buy some shares there, you know,

he would pay me from eight to twelve per cent, you know, interest on the money. I don't know exactly how often it would pay eight or twelve per cent. Well, a year. Well, after I have all the notes paid, you know it would begin to pay eight or twelve per cent. Well, we made the arrangement the first visit. I signed a paper there; then I signed the note, the second visit. The first paper I signed is not in Exhibit 94, 95 or 96. No, the first one, it was about that size (indicating), it was not a note, it was just a paper. Of course, I don't know, I can't read English.

Exhibit 94, these two papers, marked 94, that are fastened together, that is my signature there at the bottom. And this is my signature on this one, and this one. I can't remember having seen this one, No. 95. I guess I did receive it. I signed these, the second visit. I could not read the papers I signed. I guess he made them out. He was there, but I didn't watch him, of course, make them out. I couldn't read them. I guess I signed those four papers.

\$50.00 St. Ignatius, July, 1914.

Twenty months after date for value received I promise to pay to myself or order Fifty . . . . Dollars, negotiable and payable at the office from which notice is sent, with interest at the rate of eight per cent per annum from date until paid, interest payable semi-annually together with reasonable attorney's fees in case suit is instituted on this note, or this note or any part of it, is collected by an

attorney. The makers, endorsers and guarantors severally, waive presentment for payment, notice of non-payment, protest, and notice of protest on this note.

\$25 May 1, 1915.

Due .....

Address St. Ignatius .....S. DURAND.....

No. 5559

Endorsed "S. Durand."

Before that time, the first time I met Mr. Sidebotham I told him I would take \$50.00 worth.

MR. MURPHY: I offer Plaintiff's Exhibits No. 94, 95 and 96 in evidence.

Whereupon Plaintiff's Exhibit 94 was received and read in evidence, as follows, to-wit:

NORTHWESTERN TRUSTEE COMPANY

Sidebotham & Wilmot, Fiscal Agents.

Capital Stock

General Office

\$500,000.00

Lower Floor, Tod Building,

Great Falls, Mont.

Subscription No. 5559

\$100.00

Subscription for Capital Stock.

No. of Share 5.

I. S. Durand.....do hereby subscribe to Sidebotham & Wilmot, Fiscal Agents for Five shares of the capital stock of the Northwestern Trustee Company and agree to pay therefore the sum of Twenty Dollars (20.00) per share, payable as follows: \$25 Nov. 1, 1914, and 25 every six months as evidenced by certain promissory notes.

Stock certificates to be delivered when final payment is made and I hereby agree that should I fail to pay said notes when due or to make satisfactory arrangements for the payment of the same, that this subscription shall be void at the option of Sidebotham & Wilmot and that I shall forfeit to Sidebotham & Wilmot any payments made thereof.

No agent or person whomsoever has authority to vary the terms of this contract or has the power to bind the Northwestern Trustee Company or Sidebotham & Wilmot by any statement or agreement other than herein set forth.

Dated at St. Ignatius, this 1 day of July, 1914.

Agent Sidebotham & Wilmot.      Signed S. Durand.  
St. Ignatius.

Stamped across face of note as follows:

Make all checks and moneys payable

Sidebotham & Wilmot, Fiscal Agents.

Whereupon Plaintiff's Exhibit 95 was received in evidence, and is in words as follows, to-wit:

Whereupon Exhibit 95 was received in evidence, and is in words and figures as follows, to-wit:

**NORTHWESTERN TRUSTEE COMPANY**

Sidebotham & Wilmot, Fiscal Agents.

Bond, Mortgages and Investment Securities

Incorporated under the Laws of the State of  
Montana.

Capital Stock \$500,000.00.

No. 5559      No. of Shares 5.      Notes      \$100.00

St. Ignatius, July 1, 1914.

Received of S. Durand, Notes One hundred Dollars.

This being the first payment of Five shares at Twenty shares at Twenty Dollars (20.00) per share of the capital stock of the Northwestern Trustee Company. No agent or person whomsoever has authority to vary the terms of this subscription or has the power to bind the Northwestern Trustee Company or Sidebotham & Wilmot by any arrangement other than here in set forth.

Sidebotham & Wilmot,

Per R. R. Sidebotham.

\$25 Due Nov. 1, 1914

and \$25 every six months.

Whereupon Plaintiff's Exhibit 96 was received in evidence, and is in words and figures as follows, to-wit:

\$50.00.

St. Ignatius, July 1, 1914.

Nine months after date, for value received, I promise to pay to myself or order Fifty Dollars.

Negotiable and payable at the office from which notice is sent, with interest at the rate of eight per cent per annum, from date until paid, interest payable semi-annually, together with reasonable Attorney's fee in case suit is instituted on this note, or this note, or any part of it, is collected by an Attorney. The makers, endorsers and guarantors severally, waive presentment for a payment, notice of non-payment, protest, and notice of protest on this note.

\$25 due Nov. 1, 1914, and \$25 May 1, 1915.

Address St. Ignatius.

S. Durand.

No. 5559



(Endorsed) S. Durand.

11/3/14 Paid \$25.00

5/8/15 Paid 25.00

" Int. 2.35.

I signed the papers, I guess at one time, if I remember. I guess I paid them, Sidebotham and Wilmot, \$25.00 cash, what I can remember. I guess Mr. Wilmot was with him on July 1st, when I signed the paper. Mr. Sidebotham did the talking. Thereafter I paid the company twenty-five dollars, I paid the fifty dollars. Well, I don't exactly remember how many shares of stock I did tell them I would buy, but I told them I would give them fifty dollars, and then he said, "Well, may be <sup>he</sup> can take some more stock in the company later"; "Well," I said, "we will see, later."

He did tell me what kind of stock it was, but it was hard for me to understand all that. He told me lots of things, of course. He said the money would be loaned to the farmers. Yes, sir, all the people's money paid in, that be loaned to the farmers on the first mortgage, by them. When I say them, I mean the company, and they get the interest on the money.

Exhibits numbers 97, 98 and 99, I got those at St. Ignatius, from the St. Ignatius post office. I don't remember for sure if these two exhibits, 98 and 99, were contained in the envelope. Somebody home received them. I get my mail at the post office at St. Ignatius. Well, I didn't get them myself at the post office, but they come at the house from the post office. I don't know, don't remem-

ber if they had been opened. I don't read myself. My wife does. I don't know.

I recall having received Plaintiff's Exhibits 100 and 101. I received those, at St. Ignatius. I don't get my mail myself. I got the girl, home, that gets the mail. The letter was in an envelope, yes.

MR. MURPHY: I offer Exhibits 100 and 101 in evidence.

Whereupon Plaintiff's Exhibit 100 was received in evidence, and is in words and figures as follows, to-wit:

(Here insert Exhibit 100.)

PLAINTIFF'S EXHIBIT NO. 100.

Jan. 16, 1915.

Mr. S. Duraud,  
St. Ignatius, Mont.

Dear Sir:

We beg to inform you that we have disposed of the balance of \$25.00 on your \$50.00 note, dated July 1st and due May 1st, 1915, to the Bleier Auto Co., Missoula, Montana. Payment will be made by you direct to them.

Yours very truly,  
Sidebotham & Wilmot,  
Per J. G. G. Wilmot.

Whereupon Plaintiff's Exhibit 101 was received in evidence, and is in words and figures as follows, to wit:

Envelope, with cancelled, two-cent stamp; post-marked, Great Falls, January 16, 1915, 9—(P. M.) Mont.

Marked in right-hand corner: Sidebatham & Wilmot, Fiscal Agents Northwestern Trustee Company, General Offices, Great Falls Motnana.

Addressed:

Mr. S. Durand,  
St. Ignatius, Montana.

Plaintiff's Exhibits 102 and 103 I received at St. Ignatius Mission, in that envelope, from the post office.

MR. MURPHY: I offer Exhibits 102 and 103 in evidence.

Cross-Examination, by Mr. Kelly:

I can read my name. I know St. Ignatius, I can read that much. I identify this letter by the fact that it says Mr. S. Durand, St. Ignatius. Outside of that I cannot read it, nor tell what its contents are, not much. I last see this before today, sometime last summer. I had someone else read it to me.

THE COURT: The minutes showing that company was issuing circular letters, paying for the stamps on them, it will be for the jury.

MR. KELLY: We make the objection that the letter is not admissible, for the reason that it has not been sufficiently identified.

JUDGE SMITH: We join in the objection.

THE COURT: Overruled.

Exception noted.

Exhibits 97, 98 and 99, I seen them before, at St. Ignatius, at home, my place. From the mail, yes, at the house. Well, they came at the post office, them

come in the mail, and then I see myself, mail, you know, the girl carry my mail every day, twice a day. My girl bring it from the post office to my house. This letter and papers, oh, sure, I seen them, home, in my house. Oh, they were in an envelope, they didn't come that way. I don't know for sure if the envelope ever been opened. I don't think so. Of course, sometimes my wife opened my mail before I go home, I working on the farm, see. I remember her having those read to me. That is the time I first saw them. My wife had them, you know, letter marked 104 for Plaintiff, and Envelope, 105. I see them in my house. I get them at the post office, from St. Ignatius' Mission.

MR. MURPHY: I offer Exhibits 104 and 105.

Cross-examination, by Judge Smith:

I can write my name. Can't write any other words, very much. I can write in French a little bit. Well, I know now that it is there on Exhibit 94. That is one hundred dollars. Well, it is hard for me to read this right here on Exhibit 94, you know, it is English. Oh, it might be five. That is my signature right there, to Exhibit 94, this contract. That is my signature to the note. I can read that up here in the corner. It says fifty dollars. Exhibit 95, that is one hundred dollars, figures. Exhibit 96, right up here in the left-hand corner, says fifty dollars. That is my signature. I have only paid fifty dollars and interest. I signed both those notes, for fifty dollars each. No. I didn't know how much. I signed this. I know that I didn't look at

it. I took his word for it. I received some letters, asking me to pay these notes, and made answer to those letters. I gave one note after that. I know I answered some of the letters I got. My wife does my writing. I don't know, may be I recognize her signature. I got my wife to answer the letters that I received from the company; authorized her to answer the letters; told her to answer it. Yes, that is her handwriting. That is the letter I told her to write. I also tell her to write this one of June 13th. I authorized both of them.

Whreeupon Defendant's Exhibit 106 was read to the jury:

St. Ignatius, Mont.

Nov. 1914.

Dear Sirs:

I received your letter a few days ago. As to that note you wrote about, I haven't any money now, so I will drop that affair.

Yours truly,

S. Durand.

Rec'd

11/7/14

Answered do

Whereupon Defendant's Exhibit 107 was read to the jury, and is in words and figures as follows, to-wit:

St. Ignatius, Mont.

June 13, 1916.

Northwestern Trustee Co.,

Dear Sirs.—



Your letter was received a few days ago. As I told you before, I paid all I agreed to and will not pay any more. You must understand I took for only fifty dollars and it has been all paid, and that is all I can do.

Yours truly,  
S. Durand.

I know a man by the name of Roberet Bennett. He was there with Sidebotham and Wilmot. I don't think he heard one word about it, he was not with us exactly, we were some place else, talking. That was in May. I have not paid that second fifty-dollar note, and my reason is that I thought I was only subscribing for fifty dollars. I didn't pay the fifty. I paid fifty dollars. I know he gave me that to sign, and I signed it. I don't remember that they read it to me. I don't remember.

Q. Well, now, I will read it to you, and see if you cannot remember it then: "Subscription, number of shares, \$100.00. I, S. Durand, do hereby subscribe to Sidebotham and Wilmot, fiscal agents, five shares of the capital stock of the Northwestern Trustees Company, and agree to pay therefor the sum of twenty dollars per share, as follows: Five dollars November first, 1914, and twenty-five dollars every six months, evidenced by certain promissory notes, stock certificate to be delivered when final payment is made, and I hereby agree that should I fail to pay said notes when due, or to make satisfactory arrangement for the payment of the same, that this subscription shall be void, at the option of

Sidebotham and Wilmot, and that I shall forfeit to Sidebotham and Wilmot any payment made thereof. No agent has authority to vary the terms of this contract, or has the power to bind the company by any agreement other than herein set forth. Did they read that to you?

A. I don't remember now. My wife read them to me. I think, if you should read one to me, I could remember whether it was the one or not, the letter.

Please <sup>listen</sup> to, Mr. Durand. "June 19th, 1916. Mr. S. Durand, St. Ignatius, Montana. Dear Sir:—Your letter of June 13th just received. We believe if you were in our office that we could convince you that every subscriber agreed to pay twenty dollars per share, who bought stock when you did. That would be one hundred dollars for five shares. We have a large number of subscription blanks covering stock sold at twenty dollars. These are all on file in our office, and it does not stand to reason that your subscription was an exception, when we have the subscription and note in writing. We believe you are absolutely honest in your conviction, but you are simply mistaken. We thought we would dispel that idea when we sent your note to the bank bearing your signature and endorsement.

It will be the duty of this office to bring action against you on this note. If it is necessary to bring suit, and you lose, as we, of course, are convinced you will, the extra cost will amount to practically as much as the note itself. We sincerely hope that

it will not be necessary to take such action. Unless we hear from you, we will take it that your letter of the 13th is your final decision, as this letter is ours. Yours very truly, Northwestern Trustee Company,  
Per,.....

Assistant Treasurer.”

I remember receiving a letter something like that. It was signed by Miss Cort.

Witness excused.

MISS JESSIE HOSKINS, recalled.

THE COURT: Well, since this witness is called, the Court will finally rule on the objection to Exhibit 31. The objection was made on the constitutional ground that these were private papers, secure from violation, under the protection of the constitution, against unreasonable searches and seizures. It is settled law by the Supreme Court of the United States that when documents and evidence is offered in court, they never proceed to try colaterally where it came from, for if that were possible, we could never make any progress, because some question might be raised on constitutional grounds, for instance, in this case, we may have a thousand little trials within the main trial, so that the rule is, to allow the document to go in, and the objection will be overruled.

Exception noted.

Plaintiff's Exhibit 31 was received in evidence, as follows:

Northwestern Trustee Company  
Incorporated

Authorized Capital Stock \$500,000.00

Sidebotham & Wilmot, Sole Fiscal Agents

General Offices, Lower Floor, Tod Building,

Great Falls, Montana, February 12, 1914.

Mr. J. G. G. Wilnot,

Northern Hotel, Billings, Montana.

Dear Mr. Wilmot:

After you left today I saw Mr. Armour unexpectedly, and he knows that there is something up, and he told me that he was thoroughly disgusted with the Company and said that he believed that one of the two factions had to be eliminated, either ourselves or Grogan and Dalbey. He also said he was quite positive that they would be willing to go out provided their notes were canceled and the small amount paid by them was given back, and I believe it will be a very easy matter.

Mr. McVay was down to the office and I instructed him to order Cohn or Donald Arthur over here at once and get the books in shape so that everything could be cleaned up at this next meeting. McVay seems like a nice fellow and I believe he would like to have a finger in the pie, which we will talk over when I get back Sunday.

From what I learn from Armour they have no defense excepting that they are pretty much disgusted with the crowd and are ready to get out.

Keep me fully advised on whatever may happen. My address will be Cutbank. I dictated this letter and it will be sent after I leave.

With best wishes, I am

Sincerely yours,

(signed) Robt. R. Sidebotham.

RRS JR

That is my signature at the bottom of the letter, Exhibit 98. Exhibit 97 is a Northwestern Trustee Company envelope. I have seen Exhibit 99 before. It is an application for stock. I don't know whether it was gotten out by the Northwestern Trustee Company, or by Sidebotham and Wilmot. It was sent out by Sidebotham and Wilmot. The Northwestern Trustees Company sent out this circular letter, Plaintiff's Exhibit 98, signed by J. Hoskins. I would say Exhibit No. 99 was enclosed in that circular letter.

Q. Was it customary, or was it your practice, to send out this Plaintiff's Exhibit 99, enclosed in Exhibit 98?

Objection by Galen. Overruled exception.

A. These two were sent out together.

Q. That is what I mean.

A. Yes sir.

Q. And who was it that actually sent them out, mailed them?

A. Sidebotham and Wilmot.

Q. Did you do it for them?

A. Yes, I did, it was my instruction to send them out for them.

Q. Your instructions to send them out?

A. Yes, sir.

Q. I will ask you how they were sent out.

A. Through the mail.



Q. Mailed out?

A. Yes, sir.

Q. And how were they mailed out, when you speak of being mailed out, wre they dropped into the U. S. post-office?

A. As far as I can tell you, as far as I am remember.”

These two were sent out together. Sidebotham and Wilmot actually sent them out, mailed them. I did for them. It was my instruction to send them out for them. Exhibits 97, 98 and 99 were sent through the mail. And as far as I can tell you, as far as I can remember, they were dropped into the United States post office.

Whereupon, Exhibit 97 was received in evidence, and is in words and figures as follows, to-wit:

(An envelope.)	Post-marked:
Northwestern Trustee Company	
General Offices	Great Falls,
Great Falls, Montana.	Oct. 2-14
	7-PM MONT.

S. Durand,  
St. Ignatius,  
Montana.

Two-cent U. S. Postage stamp, cancelled.

Whereupon Exhibit 98 was received in evidence, and is in words and figures as follows, to wit:

“Northwestern Trustee Company,  
“(Incorporated)  
“Authorized Capital Stock and Surplus over  
\$500,000.00.

“Home Office

“Great Falls, Montana.

“Branch offices in Principal Cities and Towns in  
Montana.

“Bond Mortgage and investment securities.

“Hon. A. M. Alderson, President

Robert R. Sidebotham, Vice-President

D. G. Bertoglio, Vice-President

W. R. Allen, Vice-President

J. W. Speer, Vice-President

Wm. C. Rae, Secretary & Treasurer

J. G. G. Wilmot, Chairman,

J. Henry Evers, Director,

B. W. W. Porter, Director,

W. A. Patterson, Director,

L. W. Gibson, Director,

Henry A. Meyer, Director,

Albert G. Karcher, Director.

To the Stockholder or Subscriber Addressed:

At a meeting of the Board of Directors held on the 25th day of September, the selling price of the Company's stock was advanced from \$20 to \$30.00 per share.

The progress of our institution has been rapid, and today there are over 600 stockholders and the number is increasing daily.

The Company now plans to extend its operations into Washington, Oregon, Idaho and Wyoming, and it is believed by those most deeply interested that we will surely be the largest institution of its kind in the Northwest.

The Company's funds are being loaned out, as fast as they are paid in, on first mortgages on Montana farms and ranch property.

We have provided for the old stockholders a small block of stock that may be purchased by them within fifteen days from date, inasmuch as the selling price of the stock was increased without their having prior notice of such increase. You can purchase the stock at \$20.00 per share on a cash basis, or easy terms as low as 10% cash, and the balance on monthly, quarterly, or semi-annual payments, having as long as one year for the payment of the same.

We are enclosing a separate application for the purchase of stock, and are willing for our old subscribers to make their own terms. We will send back the necessary papers to be signed at \$20.00 per share. This purchase can only be made on condition that it reaches our office within fifteen days from this date.

Thanking you for your earnest co-operation, we are

Yours very truly,

Sidebotham, & Wilmot,

Sole Fiscal Agents,

By J. Hosking.

Whereupon, Exhibit 99 was received in evidence, and is in words and figures as follows, to-wit:

“APPLICATION FOR STOCK IN THE  
NORTHWESTERN TRUSTEE COMPANY.

“To Sidebotham & Wilmot,

Fiscal Agents,

Great Falls, Montana.

"I hereby agree to purchase.....shares  
of Northwestern Trustee Company stock at \$20.00  
per share, and agree to pay for same as follows:

.....  
.....  
.....

"All within one year after date.

"Signature .....

"Occupation .....

"Post O. Address.....

"City & State.....

"This application for stock must reach our office  
on or before October 15, 1914.

"Insert the terms of payment that will be most  
convenient for you and upon receipt of the applica-  
tion we will execute the proper papers for you to  
sign and mail to you.

"Make all checks and moneys payable to Sidebot-  
ham and Wilmot, Sole Fiscal Agents, Tod Bldg.,  
Great Falls, Montana.

"SIDEBOTHAM & WILMORE,

"Sole Fiscal Agents."

Witness excused.

Whereupon E. T. Broadwater, a witness called and  
sworn on behalf of the Government, testified as  
follows:

Direct Examination,

By Mr. Wheeler:

My name is E. T. Broadwater. I reside at Havre,  
Montana. Am a merchant. I think I was for a

short time a director of the Northwestern Trustee Company, in 1913, I believe. I don't know how I was elected a director of the Company. I never qualified as a director, never served, never attended a meeting. I was not present at the time I was elected. One trip that Mr. Sidebotham and Mr. Wilmot made to Havre, they asked me if I would be a director. Mr. Sidebotham and Mr. Wilmot visited Havre one time, called at my office and asked me if I would serve as a director, if I would act as a director. I told them I would rather not. I never invested any money in the Northwestern Trustees Company. I had stock in the Northwestern Trustee Company; I believe I had stock at the time I was elected director. It was sent to me from Great Falls, in the Northwestern Trustee Company; 47 shares, in all. There was no consideration for the 47 shares of stock I had.

Plaintiff's Exhibit 108 I have seen before. It is my own signature at the bottom, and agent, R. R. Sidebotham.

MR. WHEELER: We now offer in evidence Plaintiff's Exhibit 108.

Exhibit 108 admitted without objection, and read, as follows:

Exhibit 108 Plff.

Northwestern Trustee Company.

Member of the Trustee unit system of ownership for the development of Real Estate in the State of Montana.

Capital Stock \$500,000.00.



Incorporated under the laws of the State of Montana. General Offices, Ground Floor, First National Bank Bldg., 71½ South Thir Street, Great Falls, Montana.

### Subscription for Capital Stock.

Book No. B.	No. of Shraes 674
Subscription No.....	\$10,110.00/100

I, .....do hereby subscribe to the Northwestern Trustee Company, for Sin Hundred Seventy four shares of the capital stock of the company and agree to pay therefor the sum of Fifteen Dollars (\$15.00) per share, payable as follows in commissions that are to be earned in the future, as evidenced by certain promissory notes.

It is expressly understood that the par value of this stock is Ten Dollars (\$10.00) per share. The selling price is Fifteen Dollars (\$15.00 per share, thereby creating a surplus fund. The idea of the surplus being to have the company start its business with a capital and surplus thereby placing the company on a par with the other large investment corporations and banking institutions.

When Three Hundred Thousand Dollars (\$300,000.00) worth of the capital stock has been sold, a call will be issued and the stockholders will assemble at Great Falls, Montana, and at that time elect a permanent Board of Directors and perfect a permanent organization, stock certificate to be delivered when final payment is made and I hereby agree that should I fail to pay said notes when due or to make satisfactory arrangements for the payment of the

same, that this subscription shall be void at the option of the Northwestern Trustee Company and that I shall forfeit to the Northwestern Trustee Company any payments made thereof.

No agent has authority to vary the terms of this contract or has the power to bind the company by any argreement other than herein set forth.

Dated at Great Falls this 26th day of May, 1913.

Agent R. R. Sidebotham.

Signed E. T. Broadwater.

(Written on margin) "Treasuury subscription."

(Written across page) "Cancelled. Jan. 31, 1915"

Sidebotham and Wlimot requested me to take that option, and I understood that it was their own stock, and they were to dispose of it. They were to dispose of this for me. I was to make on it whatever they got over and above the subscription price. The stock was selling at that time for fifteen dollars, I believe.

Exhibit 109 I have seen before. That is a letter that I wrote to Sidebotham, August 10th, 1915.

MR. WHEELER: We now offer in evidence Plaintiff's Exhibit 109.

Whereupon said exhibit was received in evidence, and is in words and figures as follows, to-wit:

E. T. Broadwater.

Simon Pepin.

Broadwater & Pepin.

Havre, Montana, Aug. 10th, 1915.

Mr. Robt. R. Sidebotham,

Great Falls, Mont.

Dear Sir:

Herewith I enclose you proxies to vote stock in N. W. Trustee Co., of August Decells and Alice M. Decelles. Would have replied to your telegram, but Tely's offices close here at 8 P. M.

Hoping you will vote this stock with mine and that of Simion & Pepin in favor of declaring a dividend of 8% as per our talk. I remain,

Yours truly,

E. T. Broadwter.

I had a hard time getting Decelles and his wife to sign these proxies & only succeeded by assuring them that you would vote for declaring a dividend every six months, so don't disappoint them, or you will put me in bad.

E. T. B.

Sidebotham asked me to get the proxies. He said that the company expected to declare a dividend, and I could tell DeCelles that. I saw Mr. Sidebotham in Havre, Montana, on numerous occasions. Henry Meyer came to Havre and gave it to me, 47 shares of stock.

#### Cross-Examination.

By JUDGE SMITH: That is the stock I got. Meyers didn't give me this. He said he would make arrangements, and it was sent from Great Falls, through the mails. The 47 shares was mine while I got it. I thought I owned it. I don't remember the date; I imagine I was the owner of it when I was elected a director, or I wouldn't be a director. And when I wrote this letter that has been introduced here in evidence in relation to the DeCelles stock,

I said, "I hope you will vote this stock with mine"; by the expression, "vote with mine," I meant this 47 shares. I wrote to the company on or about the early part of September, 1913, and asked them to send me a certificate for nine shares of capital stock, which I claimed was coming to me. That was included in this, I think. I was not engaged in selling stock of the Northwestern Trustee Company. I suppose I received that letter, Exhibit 110. I don't remember exactly.

JUDGE SMITH: I offer it.

Defendant's Exhibit 110 was received in evidence, without objection, and is in words and figures as follows, to-wit:

Havre, Montana, August 28th, 1913.

Mr. E. T. Broadwater,

Havre, Montana.

Dear Sir:

In accordance with our conversation today, this is to serve as a memorandum.

We agree to pay you 2½ per cent on all business obtained either at Havre or vicinity. You are to assist in every possible way in closing and doing business for the welfare of the Northwestern Trustee Company.

With reference to business already done, we will guarantee that you will receive either through Henry Meyers or ourselves, 2½ per cent on all business done.

In regard to your agreement with Mr. Meyers for one-half of all his commission, we will see that

you are paid same at once and we will subtract same from any commission that Mr. Meyers may have due him, and if settlement cannot be had at once, it will be taken up by the Executive Committee.

This agreement will be in effect for six months.

Respectfully,

SIDEBOTHAM & WILMOT,

By .....

By .....

Well, I received the stock from Great Falls under that agreement, and I suppose it was the 2½ per cent that had been agreed to with Henry Meyers, the commission on the stock he had sold.

Witness excused.

Whereupon C. N. Burgess, a witness called and sworn on behalf of the Government, testified as follows:

#### Direct Examination.

By MR. WHEELER: My name is C. B. Burgess, I am farming. I reside five miles south of Townsend. I have resided in Broadwater County about ten years. Farming is my special business, but I have had a few stocks in other things, First National Bank at Townsend, and the elevator at Townsend, Northwestern Trustee Company, and a few more. I am acquainted with Mr. Sidebotham and Mr. Rainwater, and with Mr. Alderson, but not with Mr. Rae. I met Mr. Rainwater along about the 8th of March, 1914, something like that. I wouldn't say it was the 8th of March, but it was along that time. I met Mr. Sidebotham the 11th of



March, 1914. Mr. Rainwater was trying to sell me some stock in the Northwestern Trustee Company, and he didn't have very good luck, and he brought Mr. Sidebotham with him the last trip. They visited me at my ranch, five miles out of town. Well, I purchased ten shares of this Northwestern Trustee Company stock. In regard to the interest that it would pay, he said he thought it would be twelve to sixteen per cent, but he would insure eight per cent dividend the first year. Mr. Sidebotham made that remark. He had a whole book of letters there from different parties, Mr. Alderson, and Mr. Rae; Mr. Alderson's and Mr. Rae's letters, and statements from different parties, bragging the company up. He said Mr. Alderson was president of the company. Well, they said they were not aiming to get many stockholders here; they wanted to get a few, so that they could know the land, they wanted to loan money all through the country; they wanted the men to know the land in their community, and they wanted them on the Board for passing on the land. He said it was some big amount of money that they had loaned, but I couldn't say what it was. Nothing was said about the par value, to my knowledge at all. Mr. Rainwater tried to sell the stock to me before, and he didn't get much out of me. He said, "Surely, you don't understand this thing." He said, "I will let Mr. Sidebotham come down, and let him explain more fully." The next trip he brought Mr. Sidebotham with him. Mr. Sidebotham said that Governor Norris was their

attorney, and he said he was in the East and was getting money at five or eight per cent, and they were going to loan it out here at eight per cent, and turning it over that way, which would make the dividends for the large amount of money they were going to handle. I saw Mr. Alderson, somewhere nearly a week after I was talking to Mr. Sidebotham, and I paid for half the stock, and gave them a note for the other half. I saw Mr. Alderson in his office in the State Capitol. I also had a conversation with him over the telephone, a few days, a day or two, may be three, after the 11th of March, 1914. That was before I saw him at the Capitol. I called him up and told him that I misunderstood the way that the thing was in the Northwestern Trustee Company, and I wanted him to try and do something. He asked me what I wanted, and I told him I wanted my money and my note back, and the contract canceled. He said, "I will do what I can for you." The next I saw him was on the next Monday, I came into the Capitol here to see him. I had a conversation with him at that time with reference to the Northwestern Trustee Company. I broached the subject to him again and asked him what he was going to do about it. I informed him what they told me. I swore to that here before. He said, "Well," he says, "I always knew that Sidebotham was a crooked son-of-a-gun." He used stronger language than that. He said, "I am going to get rid of him." I said, "Why have you got such a man as that in your employ, if he is crooked?"

THE COURT: What is the object of this?

MR. WHEELER: It is to bring home knowledge to Mr. Alderson, with reference to the transactions of the company, his knowledge of the company.

THE COURT: Sidebotham's?

MR. WHEELER: Sidebotham was an officer of the company and fiscal agent of the company at the very time; was also a member of the Executive Committee, Director of the company.

THE COURT: Proceed.

JUDGE SMITH: I object to it, as incompetent, irrelevant and immaterial, and move to strike out the last answer.

THE COURT: Oh, I think the object is to bring home notice to the Defendant Alderson, of the representations that Sidebotham was making to purchasers of the stock. I think it is competent. Motion denied.

Exception noted.

Mr. Alderson made the statement then that he couldn't get an honest man to go out and sell that stock.

THE COURT: Gentlemen of the jury, later you will be told, of course, the object of all this testimony. The mere fact that one defendant might say of another that he is crooked is not proof of that fact. That is not the purpose for which it is admitted, it is for the purpose of showing notice.

Proceed.

There was lots of stuff said, but it is pretty hard

for me to call it to memory. He said that he would—he couldn't get it back himself, that he would have to have Mr. Rae, that there was a kind of disagreement over there anyway, that it took Mr. Rae and Mr. Spear and some of them to out-vote the other side. He said that Mr. Rae was at Sheridan, attending to some bank failure. I don't know what it was; that as soon as he came back they were going to Great Falls, anyway, and they would take care of that business.

He told me that he thought the stock was all right, he thought I had better keep it. I told him that I didn't want anything to do with it; I wanted to get away from it.

After that I got the letter from Mr. Sidebotham, stating that they wouldn't turn the money back, or the notes, and I came back to see him again.

Exhibits 111 and 112 I have seen before. I received them from Townsend post office, from Mr. Sidebotham.

MR. WHEELER: We offer in evidence Exhibits 111 and 112.

— — — — —

Whereupon E. T. Broadwater was recalled as a witness for further cross-examination.

By JUDGE SMITH: Sidebotham and Wilmot requested me to take that subscription. Mr. Meyer did not have anything to do with the subscription.

— — — — —

JUDGE SMITH: I object to Exhibit 112, as incompetent, irrelevant and immaterial, not tending

to prove any issue in the case.

THE COURT: It may be admitted. Objection overruled.

Exception noted.

Whereupon Plaintiff's Exhibits 111 and 112 was read to the jury, and is in words and figures as follows, to-wit:

(Here insert Ex. 111 and Ex. 112 of Plaintiff.)

(Envelope)

Northwestern Trustee Company

General Offices

Great Falls, Montana

(Cancelled 4c stamp)

Postmarked

"Great Falls, Mar. 19-15

11 - P.M.

MONT."

Mr. C. N. Burgess,

Townsend,

Mont.

PLAINTIFF'S EXHIBIT NO. 112.

NORTHWESTERN TRUSTEE LETTERHEAD.

March 19, 1915.

Mr. C. N. Burgess,

Townsend, Mont.

Dear Sir:

Our President, Mr. Alderson, has this morning reported to us that you were not informed as to the par value of the stock. We have made duplicate copies of your contract and promissory note. You will note that the par value of the stock is in the



largest style type found on this page, and we do not know how it would be possible for you to sign this contract without seeing the same. You will note that the printed matter on the contract relative to the par value is the same as it is found on your receipt.

Mr. Alderson further says that you state that Mr. Rainwater and the writer assured you that the notes would not be sold or negotiated, but would be held by the Company. In your capacity as First Vice-President of the First National Bank, you are undoubtedly aware of the fact that a note payable "To Order" is strictly negotiable and you will also note that the name of the Company does not appear upon the note. Neither the writer nor Mr. Rainwater remembers any such statement that the notes would not be sold. If that were the case that the notes were not to be negotiated, in as much as the complete written contract was entered into, there is no reason why you should not have insisted that that feature of the contract be written in. You will note that the condition to buy \$700.00 more stock was not left as a verbal statement, but was written in the contract.

This Company believes that the idea of creating an enormous surplus fund is a very valuable one to the Company, and as far as you are individually concerned your earning power is the same on the capital as it is on the surplus.

We are also enclosing a reprint from the Great Falls Tribune of the 28th day of February, and a

circular letter which is used for the explanation of the surplus.

The writer will add further that he and Mr. Rainwater did explain the surplus account to you at that time, and you surely could not be ignorant of the

value and the profit sets plainly which  
'did not permit for the surplus after same

Hoping that this will explain the error which has arisen, we are,

Yours very truly,

NORTHWESTERN TRUSTEE CO.

Per ROBERT R. SIDEBOTHAM,

Vice President.

C. N. Burgess, recalled.

After I received that letter I saw Mr. Alderson, and had a talk with him, with reference to the Northwestern Trustee Company. I came back to see Mr. Alderson at the Capitol, and ask him what he was going to do about the matter. He said that Mr. Rae had come back from Sheridan, but had gone to California; that as soon as Mr. Rae came back from California he would send me my money back. That was about all of that last interview.

Plaintiff's Exhibits 113 and 114 I have seen before. I got them out of the Townsend post office.

MR. WHEELER: We now offer them in evidence.

JUDGE SMITH: I object to it, as incompetent, irrelevant and immaterial.

MR. KELLY: We object to the introduction of

Plaintiff's Exhibit 113, because it doesn't appear to have been signed by anybody, the signature being typewritten. It does not appear to have been authorized, to have been sent by any of these defendants, and it doesn't tend to prove or disprove any of the allegations of the indictment in this case.

THE COURT: The objection will be overruled. Exception noted.

Whereupon Plaintiff's Exhibit 113 was received in evidence, and is in words and figures as follows, to-wit:

NORTHWESTERN TRUSTEE COMPANY  
(Incorporated)

Authorized Capital Stock and Surplus Over  
\$500,000.00.

HOME OFFICE GREAT FALLS, MONTANA.

HON. A. M. ALDERSON, President.

ROBT. R. SIDEBOTHAM, Vice-President.

D. G. BERTOGLIO, Vice-president.

W. R. ALLEN, Vice-President.

J. W. SPEER, Vice-President.

WM. C. RAE, Secretary and Treasurer.

Branch Offices in Principal Cities and Towns in  
Montana.

BOND, MORTGAGE AND INVESTMENT  
SECURITIES.

J. G. G. WILMOT, Chairman.

H. HENRY EVERS, Director.

B. W. PORTER, Director.

W. A. PATTERSON, Director.

L. W. GIBSON, Director.

HENRY A. MEYER, Director.

ALBERT G. KARCHER, Director.

Great Falls, Montana.

To the Stockholder or Subscriber Addressed:

On account of the many inquiries received from our stockholders with reference to the surplus account of the Northwestern Trustee Company, will state that the stock of the Company sells at \$30.00 per share, although the par value is \$10.00. Each stockholder will, however, earn dividends on the total assets of the Company, which includes the surplus as well as the capital.

As it is customary with all investment and financial concerns to start business with a surplus fund, it was deemed advisable by our Board of Directors to offer the stock at a premium, thereby creating a surplus fund and placing our Company on an equal basis with those institutions. Should our Company have sold its stock at par, it would probably have taken years to build up a surplus and put it on a competitive basis with other institutions of the country.

Trusting that it is fully clear to you why the par value is \$10.00 and the selling price \$30.00, we are,

Yours very truly,

NORTHWESTERN TRUSTEE CO.

— — —

Cross-Examination.

By MR. KELLY: I called Mr. Alderson on the telephone. I didn't say what date it was. I said it was along after the 11th.

Q. You knew, I presume, that he had been elected as a member of the board of directors, and as president of the company, by virtue of an arbitration agreement that they had at a meeting in Great Falls on the 18th?

A. I did not.

Q. You didn't know anything about that?

A. I got it from the circulars and stuff that they had.

I had not received any circulars at that time; only what Mr. Sidebotham showed me.

Q. Did he show you any circulars on the 11th of March, when he was there talking with you, showing the officers of the company?

A. Yes, sir.

Q. And those circulars showed Mr. Alderson to be president, and Mr. Rae to be treasurer?

A. Yes, sir.

My recollection is pretty clear of the visit that he made there at the time that I bought the stock. That was on the 11th of March. He told me that, in addition to the circulars which he showed me, Mr. Alderson was president of the company, and told me that Mr. Rae was treasurer of the company; and that this stock should earn from twelve to sixteen per cent; but that he would guarantee eight per cent. I have been in Montana about ten years. Before that I lived in Missouri. I sold goods most of the time I was in Missouri, in the mercantile business. I have lived at the same place. I had another ranch, that eighty acres that I bought when



I came there; it is three-quarters of a mile from the place that I lived last. Have been living down there for ten years.

At the time I bought the stock I was a stockholder in one of the banks at Townsend, and have stock in an elevator, and have been handling livestock, and doing business generally.

When Mr. Sidebotham represented to me that this stock should earn from fifteen to sixteen per cent, and that I would be guaranteed eight per cent, I did not read the contract which I signed. I signed a contract for the purchase of stock from the Northwestern Trustee Company, from Mr. Sidebotham and Mr. Rainwater, without reading it. I noticed how many dollars it called for. Did not notice how many shares it called for. There was not anything else in that contract, other than the dollars, that I noticed. We talked over the matter long before signing.

Q. I am talking about the signing of the contract, when you got to the point where you were to sign the contract, you just looked at it, and saw the number of dollars in that corner, and you just put your name down, without reading it at all?

A. Yes, sir, that is what I done. I attended meetings of the board of directors of the bank, and assisted in the business of the bank, approved loans, and such as that, loans that were being made; the large transactions of the bank would be submitted to the board of directors; the details would be handled by our cashier and other officers. I have

had considerable business experience; not in writing business, in the general business.

Q. You took it for granted that Mr. Sidebotham's word to you, that he would guarantee eight per cent on this stock, and that it ought to earn twelve or sixteen per cent—you didn't examine your contract which was in writing, and which you signed, to see whether or not such representations were made? Is that true?

A. I would like to explain that.

Q. I am asking you if that is the fact?

A. I had confidence in the man, yes, sir. My explanation is that the head men of this State was at the head of this business, and it was square.

Q. Your explanation of taking Sidebotham's word for the contract which you entered into with him on the 11th day of March, 1914, was the fact that you knew that Alderson was president of the company?

A. And Rae was secretary, and Mr. Speer was an officer.

Q. If you should learn, as a matter of fact, Mr. Burgess, that Mr. Alderson, or Mr. Rae, were not officers of the company at that time, or never attended a meeting of the stockholders or board of directors, would you still say that that was the thing that moved you to the purchase of the stock?

A. I should say that that was all that made me buy the stock, was that they were president and secretary. The only thing that made me buy the stock was that Alderson was president and Rae was sec-

retary. I telephoned to Alderson first, the first of March. I telephoned Mr. Alderson after, I should say two or three days, but I wouldn't say for certain. I would say two or three days. I don't know, I couldn't say if it was as much as four days. I will tell my best recollection about it. I went to a sale, the day that I bought the stock. In a day or two I was in town, and the cashier told me about this. It is the first I knew anything about the par value being ten dollars.

Q. I don't care what he told you, I am not asking you about that; I am asking you to fix as near as you can the time.

A. Two or three days. I telephoned Alderson. I asked Mr. Alderson about it, I told him I was not satisfied. I told him as near as I could. He asked me what I wanted. I told him I wanted my note and money back, and the contract for the stock cancelled, and he said, "I will do what I can for you." Then, following that, I went to his office to see him, in the Capitol. Well, my recollection is it was either Friday or Saturday that I telephoned to him, and it was on Monday that I was to see him. I said Friday or Saturday I thought I telephoned him. I think it was Monday I came in.

Defendants' Exhibits 116 and 117, are the receipts that I left with Mr. Alderson, I think, I am not certain. I paid no attention to the writing on that thing at all, only to the money part, that was all. I don't know as the shares were talked about at all. My understanding of the agreement was I was to

get a dividend on three hundred dollars, a guarantee of eight per cent. When I came to Mr. Alderson's office he said a good deal to me. I don't like to state just what he said to me. If you will ask me the questions, I will try to answer them.

Q. Did he tell you that these representations that this stock would yield twelve to sixteen per cent?

A. He did not.

Q. And that eight per cent was probably closer on it, was a correct representation of the company?

A. He did not. He told me that the company had had some trouble the previous year, that he and Mr. Rae and others were elected on the board of directors, and that they didn't want anybody going out and making any representations that were not in accord with the facts; and that if such had occurred, they would get rid of the fellows that were making those kind of statements. He did not say that he had not authority to get my note and my money back, but that he would take it up with the board of directors at Great Falls, at a meeting. He said he would take Mr. Rae over, and out-vote them, and send it back to me. That is to say, at a meeting of the board of directors. That is to say, in order to make an adjustment on this contract that I had signed, it would be necessary for him to have enough votes on the board of directors, if the facts warranted it, to get a return of my money and my note.

Q. He said, upon investigation, did he not, if it was found that misrepresentations had been made



to you, that he and Mr. Rae, if they could get votes enough on the board, would see that your money and your notes were returned?

A. No, not exactly; because he promised me my money back, when he and Mr. Rae went to Great Falls; he said he would. He didn't do what he agreed to. I have nothing against him, however. I felt, because he agreed with me to get my money and my notes back, and because he didn't do that, I feel just a little bit sore about it. I want to tell you the truth, that is all. No, sir, I don't wish Mr. Alderson any bad luck at all. I want to tell you the truth. And it is the truth that I didn't know the par value of this stock, and that it was misrepresented to me by these gentlemen. He said it would come out all right, and advised me to keep my stock. In other words, he thought if the matter was properly handled, as they were trying to do, that he could pull the company out of the hole it was in; and if the stockholders would stick together, and not make too much trouble, they would have a better opportunity to do it. And in that connection he told me that he would not countenance misrepresentations by the salesman, if he found it to be the fact. He told me that on each occasion that I talked to him.

#### Cross-Examination.

By JUDGE SMITH: Mr. Rainwater had some of this literature with him the first time he started to sell me some stock. I never paid much attention to it. He had a bunch of stuff in his hand. I don't



know what it was. He come into the automobile shed where I was fixing my automobile, and showed me this bunch of stuff, and begin to talk. That was about all he did on that occasion. And he finally said he would come back with Mr. Sidebotham. That was the second trip—or send Mr. Sidebotham back. The second trip, I rode down the road with them a bit. Mr. Rainwater made two trips there alone. The second time, coming down the road, I told him I didn't want no stock. He said, "You surely don't understand this thing. You will be interested." As a matter of fact, I didn't buy any stock on any representations that Rainwater made.

I don't remember the first thing I said to Mr. Alderson. Well, the substance of my complaint was that I wanted my money back, and notes back. I knew Mr. Alderson was the president of the company, and went to him to get my money and note back. I got my note back, but I paid for it. I paid one hundred and fifty dollars, in cash, and gave a note for one hundred and fifty dollars. On Defendants' Exhibit 118, that is my signature.

Whereupon Defendants' Exhibit 118 was read to the jury, and is in words and figures as follows, to-wit:

Townsend, Montana, Sept. 10, 1915.  
Northwestern Trustee Co.,  
Great Falls, Montana.

Gentlemen:

Regarding my note for \$150.00 due on the 11th

inst., will say that you may send same to the above bank for collection, together with the stock which I will promptly pay.

C. N. BURGESS,  
Vice-President.

The date of the letter is September 10, 1915. These representations that Mr. Sidebotham made to me explained how they hoped to turn the money that they would have invested, make two per cent every time they turned it. And I understood at the time that I was subscribing to the capital stock of this company; and that it was the capital stock, when the company got into operation, that was to be used for making dividends, and that he was speaking of the prospects of the company. And he told me that he believed that all of these representations would be made good by the company. I supposed it was in operation then. I said I understood that I was subscribing to the capital stock. As capital stock, I was taking shares in the thing; they were selling stock, so I supposed it was working; and that my money was to be used to carry out these very projects that he was representing to me.

I have some personal knowledge that Mrs. Manley did get a loan of six thousand dollars from the company down there in Broadwater County. That is the reason I thought it was in operation, going along and doing business. I don't know that it is a fact or not. I heard that she got the money; yes, sir.

Re-Direct-Examination.

By MR. WHEELER.

Q. Shortly after you had your first conversation with Mr. Alderson, let me ask you this: When did you receive this letter, this circular letter marked Exhibit 113, with reference to the selling price of the stock being thirty dollars, and the creation of a surplus? When did you receive that, with reference to your conversation with Mr. Alderson? Before or afterwards?

A. Why, my recollection is that I received it afterwards.

Witness excused.

Whereupon John Simpson, a witness called and sworn on behalf of the Government, testified as follows:

Direct Examination.

By MR. MURPHY: My name is John Simpson. I live about fourteen miles the other side of Havre. I have lived there about twenty-five years. My business is ranching. I purchased twenty-five shares of stock in the Northwestern Trustee Company. Paid twenty-five dollars a share. Now you got me stuck; I don't remember them people that come out to my place. I gave them a check on the First National Bank of Chinook, for the stock. I don't know, but I believe one man that sold me the stock, his name was Harper.

Q. Handing you Plaintiff's Exhibits number 118 and number 119, I will ask you, Mr. Simpson, if you recognize those?

A. Hold them until I get my glasses on. I made the check payable to the Northwestern Trustee Company, for the stock. I gave the check before I received the stock, I guess it was two weeks before. I got Exhibits 119 and 120 in the Chinook post office; I got them when the date is on them there.

Q. They are dated there. Calling your attention to Exhibit 119, it is only a portion of an envelope. Do you know who cut that envelope that way?

A. I cut that off.

MR. WHEELER: I offer in evidence Exhibits 119 and 120.

JUDGE SMITH: I object to them as incompetent, irrelevant and immaterial, and not proving or tending to prove any of the issues in the case.

MR. WHEELER: I will state to Your Honor, we expect to follow this up by proof, by the parties in the office.

THE COURT: Wasn't there a meeting some time in March, 1914, where circular letters were authorized?

MR. WHEELER: There is an authorization in the minutes of the meeting, or a contract, whereby they authorized these circular letters, to advertise.

MR. MURPHY: Plaintiff's Exhibit 69 is identical with that circular, which was heretofore introduced and read.

THE COURT: The objection will be overruled. Exception noted.

MR. MURPHY: Plaintiff's Exhibit number 120 is the same circular, the same kind of circular as

Plaintiff's Exhibit 69, which has been heretofore read to you, signed Northwestern Trustee Company, by A. M. Alderson, President, with initials under it. Exhibit number 119 is the front part of an envelope that was addressed to Mr. John Simpson, Chinook, Montana, bearing a two-cent United States postage stamp, duly canceled, and postmarked, and in the upper left-hand corner, "Northwestern Trustee Company, Great Falls, Montana."

Witness excused.

Whereupon Guy Thompson, a witness called and sworn on behalf of the Government, testified as follows:

Direct Examination.

By MR. BALDWIN: My name is Guy Thompson. I live at Whitefish, Montana. I have lived there about five years. Have been engaged at that place in ladies' furnishings. I am acquainted with a man named C. A. Rainwater, one of the defendants in this action. Well, he called upon me, and solicited me to buy some stock in the Northwestern Trustee Company. I couldn't state the exact date. He called upon me the first time, if my memory serves me, I believe, around December that year, previous to the time that I bought the stock, that was 1913. The first time that Mr. Rainwater called upon me, I couldn't state just exactly what representations he did make, as I didn't pay much attention to him. I took that literature he handed me that time, and as soon as he went out of the store, I threw it into the waste-paper basket. In a por-



tion of a month, or may be a little later, he called on me again, and at that time he gave me considerable matter, printed matter, and during previous times, between that, I had received matter through the mail from them, and this time, why, they represented to me, as my memory serves me, that several prominent men all over the State were interested in the company. In using the word "they," I refer to the different people that he represented to me as being stockholders in this company, prominent men of the State. I believe there was a gentleman from Butte, I believe he said his name was Bertoglio. Bertoglio, that probably was the name; and Spears, I believe was the gentleman from Great Falls, was one. I remember those two.

I wouldn't say as to what price he did quote me that time as to the par value. I was not very much interested in buying stock at this time. I bought the stock the 24th of April, 1914, from Robert R. Sidebotham, one of the defendants in this action. At that time, and previous to that time, Mr. Sidebotham had called upon me and made representations. He said that this stock would pay a dividend of at least eight per cent within one year; and that it would be worth double the amount I was paying for it at that time, and that in ten years it would probably be worth fifteen hundred dollars; fifteen hundred dollars for five shares; and I laughed at him; I told him that I thought it was a little bit strong. Well, prior to the time that he sold me this stock, he brought in Mr. W. C. Rae and introduced

him to me, and who said the company was all right and that the stock was a good proposition. I couldn't say the exact date that Mr. Rae was introduced to me, but it was a short time prior to my buying the stock. I had a short conversation with Mr. Rae. Mr. Sidebotham one morning—oh, it was about between nine and ten o'clock, came in my store, and I was in my office, and said, "Mr. Thompson, I want to introduce to you Mr. Rae, the Treasurer of the State of Montana, and who also is Treasurer and Secretary of the Northwestern Trustee Company." And Mr. Rae said to me that he understood that I had heard some things about their company; that it was not in a strong financial condition, and asked me who told me this; and I told him that I received this in confidence, and I didn't care to divulge the man's name who told me this. He went on and gave me quite a talk in regard to the financial condition of the company, and he said, I would make no mistake whatever if I purchased the stock in this company. I had never met Mr. Rae prior to that time.

Q. Is he in the Court-room at this time, Mr. Thompson, the man that was introduced to you as Mr. Rae at that time?

A. Yes, the only Mr. Rae that I know is in the Court-room at this time.

Q. That is the man that was introduced to you at that time as Mr. Rae? Will you please point him out?

A. This gentleman right over there. He is

smiling there now.

Q. You mean Mr. Wilmot?

A. Mr. Rae is all I know him.

THE COURT: Which one is he pointing to?

THE WITNESS: That is the gentleman, there (pointing to Mr. Wilmot).

I have seen that paper before, Exhibit 121. I received it through the mail, at Whitefish, Montana.

MR. WHEELER: We now offer this exhibit in evidence.

JUDGE SMITH: I object to it, as incompetent, irrelevant and immaterial, not tending to prove any issue in this case.

Objection overruled.

Exception noted.

Exhibit number 121 was received in evidence, and is in words and figures as follows, to-wit:

Great Falls Daily Tribune, December 25, 1915.

### MONEY CHEAPER

### BUSINESS GOOD

So Declares Manager of Northwestern Trustee Company on Return from New York Trip.

Declaring general business conditions in the east are better than for a period of years, R. R. Sidebotham, vice-president and general manager of the Northwestern Trustee company, returned yesterday from an extended business trip to the Twin Cities, Chicago, New York and Philadelphia. Mr. Sidebotham was particularly well pleased with conditions as he found them in financial circles, and he says the eastern money concerns are beginning to

turn their attention to the State of Montana and to consider the purchase of sizeable blocks of farm mortgages from this state. He says money is plentiful and cheaper, commercial loans running as low as three per cent.

“Ammunition factories, steel mills and other industrial concerns are working night and day to meet the demands of the trade, and are even then unable to keep up with the orders,” said Mr. Sidebotham. “Money is cheaper in the eastern markets than it has been for years and some commercial loans are being negotiated as low as three per cent.

“An especially interesting fact is the tendency of the large insurance companies to take Montana securities. Many contemplate taking on for the first time large blocks of Montana mortgages for investment, and I look to see a very satisfactory business from that source during the coming year. Without doubt the remarkable showing our state has made in crop production in the past year has gained the recognition for Montana as an agricultural state.

“There is another force at work, however, which is worthy of mention. The Montana mortgage loan companies are doing a very good work in educating the eastern investors in the actual conditions that exist here and the real worth of our mortgages as investment propositions.”

The paper marked Exhibit number 122 I have seen before. I saw it at Whitefish, I also received that from the mail, at Whitefish, Montana.



MR. BALDWIN: We now offer this paper in evidence, if the Court please. I take it there are other copies in the record.

JUDGE SMITH: The same objection.

THE COURT: A like ruling.

Exception noted.

Whereupon Plaintiff's Exhibit 122 was received in evidence, and is in words and figures as follows, to-wit:

(Here insert Exhibit 122.)

COMPANY NOW COMPILING  
STATISTICS ON MONTANA.

---

NORTHWESTERN TRUSTEE COMPANY  
WILL SUPPLY INFORMATION RE-  
GARDING THE STATE VALUABLE  
TO LIFE INSURANCE COMPANIES  
AND OTHER INVESTORS.

---

"Upon my recent trip throughout the east, I found the big life insurance companies unacquainted with the conditions in Montana; they have not looked upon this state as an agricultural state, but as a cattle and sheep country," said Robert R. Sidebotham, general manager of the Northwestern Trustee company, today.

"We are now working in connection with the state agricultural department, United States department of agriculture and nearly all the commercial clubs and chambers of commerce in the state, compiling statistics on all the counties and agri-



cultural sections of Montana, getting as near as possible the crop yield for the past 10 years, rainfall conditions and all other data pertinent to the agricultural development. During the past sixty days our firm has sent out thousands of letters. We are entering into a national and international campaign to sell Montana mortgages and to interest foreign investors who have never before made investments in this state.

“We have an expert making a climatological map of this state which will show conclusively that Montana has sufficient rainfall to produce crops equal to any state in the union. The rainfall will be shown section by section. The facts brought forth will be surprising to many who have not realized the enormous acreage classified as the best farm land to be found anywhere. The national advertising campaign is now being carried out and within a short time we should be bringing outside capital from most of the financial centers of this country. The company’s slogan is, ‘Montana Leads the World.’ ”

Mr Sidebotham has returned from the Pacific coast, where he found a ready market for Montana mortgages.

Photograph of  
ROBERT R. SIDEBOTHAM

General Manager Northwestern Trustee Co.

I have seen that paper before, Exhibit No. 123. I first saw it when it was sent to me at Whitefish, Montana. It came through the mails from the

Northwestern Trustee Company.

MR. BALDWIN: We now offer this in evidence.

Same objections.

THE COURT: Very well. The objections are overruled.

Exception noted.

(Here insert Ex. 123.) Ex. 123 is identical with exhibit number 90 on page 318

Cross-Examination.

By JUDGE SMITH: I paid two of my notes. The aggregate amount of my subscriptions was five shares, twenty dollars a share, one hundred dollars. I gave four notes, twenty dollars apiece. I have paid two. The other two I have refused to pay. I am financially able to pay them. I have been sued on those notes. Mr. Rainwater called on me first, and then he came again alone. He talked to me, and also give me considerable talk on those he signed. Rainwater didn't sell me the stock. Mr. Sidebotham sold me the stock. The first time he came he left me literature, and I threw it in the waste-basket. I was not interested, and I didn't want it laying around. The second time, he gave me lierature. I laid it on my desk, and put it in a pigeonhole. I didn't buy any stock that time. The third time that anybody approached me, Mr. Sidebotham was the one about that time who came along. I think Mr. Rainwater was over there with him. I did not buy any stock at that time. The next time Mr. Sidebotham approached me. There was a

gentleman there, Mr. Rae, over there in the corner at the table there, with him. I am not considerably incensed at Sidebotham. I have no malice or feeling against him. This is Mr. Wilmot; I know him as Mr. Rae. My wife was present. Only Mr. Sidebotham there was present, and the gentleman there whom he introduced to me; and he said himself that he was Mr. Rae, and my wife, nobody else. That was not the time I bought the stock. Mr. Sidebotham approached me next time, came down to my house. When we had the talk nobody was with him. I don't remember; they were in and out several times. Mr. Sidebotham came down to the house. He told me that if I would buy the stock he would have Mr. Rainwater take out fifty dollars' worth of ladies' clothing out of the store, and Mr. Rainwater would pay for fifty dollars' of the stock. Yes, they did that afterwards. After that I supposed Mr. Rae came there and talked to me and told me it was all right. If that is his name, Mr. Wilmot; at that time he was Mr. Rae; that is all I know him as he was, Rae. I am going to stay with that. Until I am informed that it is not Mr. Rae, I do not know Mr. Rae. I don't know Mr. Rae yet.

It was when I bought the stock, if I remember, that two of them came together, or more. Mr. Sidebotham was present; I don't recall who else was with him at the time. I couldn't say if anybody was with him.

I don't know a man by the name of Lambert. I don't remember him. I have been connected with

the mercantile business about twelve years. My wife is a partner with me in the business. I didn't believe him when he said a hundred dollars' worth of stock would be worth fifteen hundred dollars in ten years. In my testimony I said I didn't believe it. My reason for not paying that other note was because I didn't think the company was on the square. I told him at the time, I told him at one time that I didn't have the money at the time, but I could have raised the money. I told him at that time I was short of money, and afterwards I began to investigate the company, I found out that the company was not on a strong financial footing, I didn't consider that my money was safe. That is all I can recall right now. I think that is plenty. I don't know as I am pretty sure about this whole thing.

I wrote Defendants' Exhibit 124. That is my signature and my own handwriting.

Thereupon Defendants' Exhibit number 124 was received in evidence, and is in words and figures as follows, to-wit:

GUY THOMPSON & COMPANY

Dry Goods, Ladies' Furnishings

Millinery and Notions

Whitefish, Montana, November 17, 1915.

Northwestern Trustee Co.,

Great Falls, Montana.

Gentlemen:

There is due on the stock notes to December 1st, or rather the 24th of this month, \$56.33. Now

gentlemen, I want to pay these two notes just as much as you want to collect the money, but just at the present time it seems almost impossible for me to raise any money. I would like to know if I cannot give you three notes for \$15.00, each one payable December 24, and one January 24, and one February 24. I will meet them and pay you now the interest and \$5.00, making the payment \$11.33. The only reason I have for not paying for not making full payment at this time is I do not have the money and would be unable to raise it at this time. Kindly let me hear from you at your earliest convenience.

I remain, Yours truly,  
GUY THOMPSON.

I have not seen W. C. Rae before that I know of, not before today. Never had any conversation with him. I don't know the gentleman.

Re-Direct Examination.

Q. When did you make the investigation as to the financial condition of this company with reference to a letter marked Defendants' Exhibit 124, with reference to the time of that letter?

JUDGE SMITH: I object to that, as not proper re-direct examination, incompetent, irrelevant and immaterial, and calling for a conclusion.

THE COURT: Well, I think it is material. You apparently have introduced Exhibit 124, his letter, for the purpose of impeaching his statement, that his reason for not paying the note was that he found the company not what he thought it was. They



have a right to explain this letter, whether his conclusion that the company would not warrant his payment was after or before that letter. The objection is overruled.

Exception noted.

After writing this letter I afterwards started to investigate more thoroughly, and I found out, the more investigation, that the less money they had, and I figured they were not on a financial basis.

JUDGE SMITH: I think it is immaterial.

THE COURT: Why, it is simply showing why he did not pay his notes, as long as you brought it into the case. It doesn't tend to prove that the company was in that condition at all.

Witness excused.

— — —

Whereupon Mrs. Guy Thompson, a witness called and sworn on behalf of the Government, testified as follows:

Direct Examination.

By MR. BALDWIN: My name is Mrs. Guy Thompson. I am the wife of Guy Thompson. I was present when Mr. Rainwater or Mr. Sidebotham talked with my husband with reference to his buying stock in the Northwestern Trustee Company. If I am not mistaken, we bought the stock in April, 1914, from Mr. Sidebotham. I didn't want Mr. Thompson to make the investment. I remember Mr. Sidebotham soliciting Mr. Thompson. Mr. Sidebotham made it very clear and was very positive he said that it was a paying investment, and if

we wanted, and if we made the investment, that we would never regret it; that the State officers were in the company, and influential men in our own town of Whitefish, Montana, and if they would investigate, why we would not hesitate; and Mr. Thompson was thinking about taking stock. Now that is about all I can say on that. I could tell more. I don't know whether you would allow me to tell it or not. Mr. Sidebotham told us that the stock was worth at that time fifteen dollars per share, and it was constantly increasing. That was before we bought the stock, but at the time we bought it we paid twenty dollars a share. Mr. Sidebotham also said to me that I ought to be willing for Mr. Thompson to make the investment and take it out in my name, and that it would be a good thing for me. He also said that if we wanted anything to use as collateral, that Northwestern Trustee stock would be good collateral, we could put it up in the way of borrowing money, or anything like that. Mr. Sidebotham said it was going awful high. It was so high, that actually I don't believe that I can tell it. Well, it sounded ridiculous to me, and I don't believe I better try to tell it. Well, in a few years he said it would be worth, oh, several times the amount that it was at that time, cannot say that intelligently, I wouldn't want to guess, because I want to be perfectly truthful; I wouldn't want to say, because I want to be perfectly truthful: I wouldn't want to say, but it was awful high anyway.

Fifty dollars was paid on account of the stock. Mr. Rainwater and Mr. Sidebotham called together, and there was Mr. Rainwater and Mr. Sidebotham at one time, before we took the stock. I said that Mr. Rae was present, at one time. Mr. Sidebotham introduced him to me as Mr. Rae. I didn't know Mr. Rae personally. I never saw the man before. He said it was a paying investment; and they were under the impression that we had been informed that it was not a sound institution, and he said that it couldn't be that, and he wanted to prove to us that it was a sound institution, and he said that he was one of the officers of the State, and was under a heavy bond, and he couldn't be dishonest. That gentleman over there, right by Mr. Sidebotham.

THE COURT: Let the record show that the witness pointed to the defendant Wilmot, as being the Mr. Rae referred to by her.

Well, we didn't pay that fifty dollars in cash. We paid it in merchandise out of our ladies' furnishing store.

Cross-Examination.

By Judge Smith:

Mr. Sidebotham and Mr. Thompson were present when the deal was actually consummated, finished up for the Northwestern Trustee stock. I was there also. I don't think anybody else was present. I couldn't say positively. The transaction was closed in our store.

I don't know Mr. J. R. Lambert. I don't think I ever did hear of him, so I wouldn't say; I have no

recollection at this time. Well, I was interested in the purchase of the stock, in the same way that any wife would be in a transaction that her husband was making. I cannot say that I have any financial interest in this stock, any money invested in it, or property. My efforts in my work, and my time, are spent in that, that is, the place where we make our living; we work together in the store. I don't know that I can say that I was a party in the purchase of the stock. Mr. Thompson bought the stock, and if I am not mistaken the stock was issued in Mr. Guy Thompson's name. I certainly did talk this matter over with Mr. Thompson.

Cross-Examination.

By Mr. Galen:

I don't know him, this gentleman whose shoulder you now have your hand on. No, sir, I cannot say that I have ever seen him before. He has been pointed out to me since I came to the Court-room as Mr. W. C. Rae.

— — —

Whereupon George McKnight, a witness called and sworn on behalf of the Government, testified as follows:

Direct Examination.

By Mr. Murphy:

My name is George McKnight. I live principally in Townsend, for the last year. I have lived there about forty-five years. I have no particular business at the present time. Farming and stock-raising has been my business. I remember Mr. Sidebotham

and Mr. Alderson. They are the only ones I believe I know. I did make purchases of stock in the Northwestern Trustee Company, from Mr. Sidebotham and Mr. Wills.

JUDGE SMITH: I object to any further questions on these lines from this witness, if your Honor please, on the ground that it does not tend to prove any of the charges set forth in the indictments, for the reason that this men's name is not mentioned in the indictment.

THE COURT: Objection overruled.

Exception taken.

I first met Mr. Sidebotham, or Mr. Wills, along in the early part of March, 1915, I believe, over at our home place, in the Missouri River Valley, near Townsend, about four miles from there. I was living at the old home, our place there, with my sister and her husband, Mr. Manley; they had the place rented. Mr. Sidebotham and Mr. Wills came along in the yard there one morning about nine or ten o'clock, I believe; and they introduced, Mr. Wills, I believe, is the first one spoke, and introduced Mr. Sidebotham. He said that they were in the farm loan business, and were making a few loans in the neighborhood. I believe, in fact, they said they were directed there by Mr. Riley. Well, I don't remember all that was said, but I finally told them that we were anxious to get a loan on that place, and which way it laid, and I think I told them that the land laid out there partly on the road that they come down from Riley's, and I think it was Mr.



Wills, I am not sure, said they didn't see why it would not be a good loan. They asked the amount, and I gave it to them, and I said we wanted to borrow seven thousand dollars, and we talked a little while, and I invited them in the house. They went in the house with me, Mr. Sidebotham and Mr. Wills, and myself. My sister, Mrs. Manley, was there, and Mrs. Calloway. I couldn't tell what conversation took place between Mr. Sidebotham and Mr. Wills and myself in the house, or in my presence, except in a general way. They introduced themselves as representing this Northwestern Trustee Company, said it was a farm loan institution, and in a general way they introduced their plans of doing business. They said, I think their plan was to get money in the east at a certain rate of interest, I don't know what it was, and loan it out at a slightly advanced rate of interest, on first mortgages, farm loans, and they outlined a general plan of their way of doing business. They stayed quite awhile, according to my recollection. They first named quite a good many of the officers of the head of the institution. They named Mr. Alderson for one, Mr. Rae, Mr. Norris, Mr. Allen, I believe, and quite a good many others, of being heavy stockholders and officers of the institution. The Mr. Allen, it seems to me, I don't know his initials, I think may be it was Ex-Lieutenant Governor Allen, I believe, of Montana. I was requested to purchase stock, during the portion of the conversation before they left the house. I don't remember what it was, the ex-

tent the said these people were interested. They said Mr. Alderson was a heavy stockholder. They represented it as a good institution to buy stock in; another thing they said that they was only a certain amount of stock for sale, and after that it wouldn't be bought. I remember that they spoke first to one, than another, and Mrs. Calloway, she talked of purchasing some stock, and she wasn't certain about it; and Mr. Sidebotham and Mr. Wills both said the stock could be sold at any time that she wanted to dispose of it. They had asked me, and I said I didn't want to buy any stock. The loan of the seven thousand dollars was discussed. They said they thought the loan could me made, that they could make the loan, and they said they had the money at that time. They done quite a lot of talking, and cited several institutions of this kind that paid large dividends, started on small beginnings; and they read circulars and literature, quite a good deal, showing what they did in other places and other cities. I did afterwards buy stock in that corporation, ten shares.

I recognize Exhibit 125. I read that. I got it from Mr. Wills.

MR. MURPHY: I offer in evidence Exhibit 125.

Whereupon said Exhibit 125 was received in evidence, without objection, and is in words and figures as follows, to-wit:

NORTHWESTERN TRUSTEE COMPANY.

Sidebotham & Wilmot, Fiscal Agents, Bonds Mort-

gages and Securities.

Incorporated under the laws of the State of  
Montana

Capital Stock \$500,000.00

No. 5400

No. of Shares 10

Notes \$400.00

Townsend, Mont., Mar. 10, 1915.

Received of George McKnight

Three Hundred Dollars in notes.

Payable in 30 days provided we make Mrs. Man-  
ley's loan

This being the first payment of Ten shares at  
Thirty Dollars (30.00) per share, of the Capital  
Stock of the Northwestern Trustee Company. No  
agent or person whomsoever has authority to vary  
the terms of this subscription or has the power to  
bind the Northwestern Trustee Company or Side-  
botham & Wilmot by any arrangement other than  
herein set forth.

Sidebotham & Wilmot

By E. C. Wills.

Not A Commercial Bank.

I did execute a note at that time for that stock.  
No, sir, I didn't pay the notes directly, but they  
were paid. I did have a conversation or talk with  
Mr. Alderson afterwards. After I got this stock,  
and I gave the note for it. Yes, it was before the  
stock had been delivered, and the note paid. I saw  
him at his office in the State building, Helena, Mon-  
tana. Well, I don't remember all the conversation  
I did have with Mr. Alderson. I told Mr. Alderson

we had been informed that this here concern was not what it was reputed by Mr. Sidebotham and Wills. He asked me what I had heard, and what they had done. I told him that they represented this institution to be a first class institution, and of good standing, and the stock would be a good investment, and there was other conversation. I told him, I showed him these receipts; they wrote across the face of it. They annulled the very thing that I wanted specified in the contract, and I considered it left me with these notes, and released them from their side of the the contract, it seemed to me; and he looked at the receipts and we talked about the conditions of this loan, and I asked him, or told him, rather, that we didn't want this stock unless the loan was made; and he said, how about it, in case the loan was made. I said that we would keep the stock. He said if the loan was not made, the stock deal would be off. He said in a genral way that it was a good company, that is, he intimated that the investment would be good. I don't remember what he did say. He said that it was a company in good standing. He didn't say anything then about having that provision written on it, about this contract about that. He did not say anything about it at any other time. I asked him about the promotion of the company, about how it was that this stock was selling at thirty dollars a share, and only ten dollars par value, and I asked him if all that money went for promotion, or that extra money between the price of the par value of the stock and the price it was selling for.

He took a pencil, I believe, and figured out that the percentage of that extra money that went for promotion was less than other companies of the kind, charged for promoting. I don't remember what it was; he did state, how much went for promoting, but I don't remember what it was.

I have seen Plaintiff's Exhibit 126 and 127. I got them in Townsend, through the mail. I couldn't tell whether I got them at the post office, or whether they were delivered at the mail box at the ranch. We have the free rural delivery service at our ranch, and have a box there. We sometimes call at the post office at Townsend.

MR. MURPHY: I offer Plaintiff's Exhibit 126 and 127 in evidence.

MR. KELLY: We offer the same general objection, and I would like to have that applied.

MR. MURPHY: That is a circular that has been introduced in evidence before, and I don't desire to read it, but I will read the envelope.

WHEREUPON Plaintiff's Exhibit 126 was received in evidence, and is in words and figures as follows, to-wit:

(Envelope)

Northwestern Trustee Company  
General Offices  
Great Falls

Great Falls  
Aug. 16-15  
7—P. M.  
Montana

United  
States  
Postage  
Stamp.



George McKnight  
Townsend,  
Montana.

Cross-Examination,

By Mr. Kelly:

It must be about along the middle of March, 1915, when I went to see Mr. Alderson on this matter. Mr. Teelor from the Missouri Valley was with me at that time. We went in and discussed with Mr. Alderson the porposition of me having purchased this stock; and said that in substance it was purchased by me with the understanding that Mrs. Manley was to get a loan on this farm. And Mr. Alderson told me that if the agent made that representation to me that he would do the best he could to see that it was fulfilled. And following that, Mr. Alderson did take the matter up with the company, and procured the loan on the ranch; the loan was made, yes, sir. Mr. Alderson went down and examined the property personally, and secured a loan for \$6,000.00. The amount is not exactly right, though; it was \$6,500.00; that was the amount they agreed to advance onthe loan. It is pretty hard to tell how much the loan actually amounted to when we got it. Instead of advancing \$6,500.00, at eight per cent, they raised it to \$7,100.00, at six per cent; they raised it to \$7,100.00, at six per cent, and they advanced only \$5,100.00, in cash. This money was sent to the First National Bank in Townsend. Mrs. Manley got the contract with her on that loan; she is the one that got the loan.

By JUDGE SMITH:

I didn't say that I supervised this loan of Mrs. Manley's, or took care of her business for her on this particular matter. I was familiar with the transaction as it was consummated when she secured this loan. I at that time protested that it was not in accord with the agreement. To Mrs. Manley, that is, I advised her not to accept it. She finally did accept it. I did not see Mr. Alderson after that. Never complained to him since that date.

Q. I will reframe the question. Following the consummation of this agreement, the securing of the loan by your sister, did you ever complain to Mr. Alderson or advise him in any way that the loan was not satisfactory, or in accord with the agreement which you understood you had?

A. I did not. I didn't consider that Mr. Alderson was responsible, was any more responsible than anybody else in that company, and it was Mrs. Manley that had the deal with them. I simply advised her not to accept it.

I didn't advise Mr. Alderson that it was not satisfactory. When I talked to Mr. Alderson in his office in March, he didn't tell me that this company was on a dividend-paying basis at that time; nothing said that I remember of. No, sir, he did not tell me that they would guarantee me any particular amount on my investment. He did tell me that the company in the past had some difficulty in financing; that they had some internal dissension in the board of directors, and likewise among the stock-

holders. If he told me that in March, 1914, when this dissension sort of climaxed, that there was an arbitration committee appointed, which selected among others himself and Mr. Rae, to go on the board of directors, I don't remember it. I won't say that he did; I don't remember it if he did tell me that they had a new board of directors now, that was going to do business, and that they could put this company on a paying basis. He might have said that they didn't want any agents out in the field, and wouldn't stand for any, if they were making any misrepresentations, they wouldn't keep them with the company; he used pretty strong language, condemning that kind of business, condemning the misrepresentations of any agents in the field.

#### Cross-Examination.

By Judge Smith:

I first approached Mr. Sidebotham about this matter, and Mr. Wills. I asked Mr. Alderson who this Mr. Wills was, what connection he had with this company, and he said he was an agent for Sidebotham and Wilmot, as sales agent. I saw him in the building yesterday. Well, I got it on the streets of Townsend; I don't remember who it was that first started it, or said that there was something wrong with this company. It was street talk. I did see a circular letter of inquiry sent out by the post office department, wherein I was asked to answer certain questions as to how much stock I had, or what I paid for it. I will correct that statement:

there was one sent to me in California. I got a blank from the post office inspector to be filled out, with certain questions; I don't remember what they were now; and I filled it out, and returned it to the post office department in Spokane.

The stock was to be taken on condition that they made this loan. It is a fact that they took as a basis the sum of \$6,500.00, deducted two per cent for five years, interest,—or added for five years, making a total of \$7,150.00, and then, instead of charging my sister eight per cent on her loan, as was the original agreement, they charged six per cent on this increased amount, having taken out the two per cent in advance. That was not all agreed to by my sister; not to my knowledge or hers either, I am certain. She signed the mortgage. She didn't agree before the transaction was made, before they sent over those papers, to close up the deal. She had not agreed to that; I know she didn't. She finally did agree, yes, sir. I advised her not to.

Q. Now, isn't it a fact that, before the loan was made, the approval of both of the Townsend banks was obtained on the part of the company, before they loaned the money? Do you know anything about that?

MR. WHEELER: I object to that, as not proper cross-examination.

A. I didn't exactly understand the question.

THE COURT: Objection sustained.

Exception taken.

Mr. Alderson came down there and appraised the



property. It is a fact also that my sister subscribed for some stock in this company, Mrs. Manley, and the other lady also, Mrs. Calloway, she subscribed for some stock in that way. It is a fact that this loan was made in order to settle up some estate that was in course of probate down there, and we did settle it up with this money, in a way. It is a fact that Mrs. Manley's stock, and Mrs. Calloway's stock, was paid out of that money, from the amount, thereby reducing the amount to five thousand four hundred dollars. My stock, that was held out, too.

Now, they had a lot of this printed literature there, when they came to sell the stock, and they showed it to me, and laid that on the table in our house, and figured on it. I was standing there, looking at them, listening to them. Mr. Sidebotham or Mr. Wills or somebody made some figures, out at the ranch, as to what the stock would probably pay. They had considerable of this printed literature there at that time. They were not always figuring from this literature. This literature, most of it, was circulars, and some pamphlet forms, stating about the standing, rating, and the business that other institutions of this kind had done; and letters, printed letters, from the most prominent men in this State, I believe, and other states, congratulating Mr. Sidebotham on the work they were doing, establishing this concern here in Great Falls. They said that they hoped to be as successful as these other big institutions; and cited cases of some large financial institutions which had made a success in the mort-



gage loan business. They told us that they had to get outside money into the State from insurance companies and other large corporations having a large amount of money on hand, and turning it over and making two per cent on it, as fast as they could turn it.

#### Re-Direct Examination.

By Mr. Murphy:

I was there when Mr. Alderson came down there to examine the land. There was very little talk, if any, about the company or the loan. Mr. Alderson came there and went right out. I showed him over the place. There was a lady with him, I believe it was his wife, and some children. They didn't stay very long. Sidebotham and Wilmot were not with him. I will state, if I be permitted, that while we were out looking over the place, Mr. Alderson asked me what chances there were for Mrs. Manley to pay the interest on that loan; and he figured up the amount of interest at eight per cent, on seven thousand dollars, something like \$540 a year. I told him what I thought the chances was on it.

Mrs. Manley bought five shares of the stock, and Mrs. Calloway twenty, at thirty dollars per share. I got ten shares, at thirty dollars per share. I was there at the time that the loan was made and the money turned over, the fiftyfour hundred dollars.

Q. Do you know what was done with the difference between the fifty-four hundred dollars and the seventy-one hundred dollars, the face of the mortgage?

A. Why, it was the price of the stock that I took, and the price of the stock that Mrs. Calloway took, and the price of the stock that Mrs. Manley took, shares of stock.

Q. That was deducted from the amount of the mortgage?

A. Yes, sir.

Re-Cross-Examination.

By Mr. Kelly:

I bought there altogether one thousand and fifty dollars' worth of stock. The application was for seven thousand dollars, but the statement come from the headquarters that they wouldn't advance only sixty-five hundred dollars.

Q. And they added two per cent on that, because the loan was for six per cent instead of eight, for the purpose of transfer in the east, as was explained to you? Wasn't that true?

A. It was not explained until the deal was just closed up, and final papers come.

Q. I mean, when these agents were talking with you about the methods of their company, they explained to you that they loaned money here at eight per cent, and drew the mortgage at six per cent, for an additional amount to make up the difference in the interest, and then turned the mortgage in the east, and that made the difference? Isn't that the fact?

A. That was not the statement as they made, to my knowledge, at that time. I didn't know that that was the mode of handling this class of business.

Q. But at any rate, out of this \$6,500, instead of \$6,500, your sister signed a mortgage for \$7,100, at six per cent, and they took out the thousand and fifty dollars, which was due on the stock purchase which you paid, leaving the balance of \$5,400? Isn't that true,

A. I don't think it worked out that way, though.

When Mr. Alderson was down there he discussed with me the possibility of my sister being able to pay this interest. He had in mind the question as to whether or not the loan was a safe one, and explained that to me.

Re-Cross-Examination.

By Judge Smith:

There wasn't anything said to me by either Wills or Sidebotham about when we were to expect a dividend on our stock. There was no definite time set that I remember of.

Witness excused.

— — —

Whereupon S. G. Swiggart, a witness called and sworn on behalf of the Government, testified as follows:

Direct Examination.

By Mr. Wheeler:

My name is S. G. Swiggart. I am a civil engineer, residing at Missoula. I really began residing there in September, 1912. Have lived in Montana since April 1st, 1912. Am acquainted with Mr. Sidebotham. I got acquainted with him the sixth of January, 1914, at the camp of the Flathead reclamation

project, about six miles southwest of Polson, called Quarry Camp. Mr. Miller was with Mr. Sidebotham at that time. I subscribed for ten shares of stock in the Northwestern Trustee Company, at twenty dollars. They represented the stock, or the Northwestern Trustee Company, to pay large dividends, and that they expected to have eight per cent dividend the first of August, 1914. They showed a great many statistics of other concerns similar to it, I think as high as thirty per cent, and more. Oh, they gave us a circular with a lot of names on there, and I think Mr. Sidebotham himself was president just at that time. I cannot remember now who they did say were the stockholders. There was quite a number of prominent men from Great Falls and Helena and Havre and other places. I think the names of the defendants, Bertoglio, Rae or Alderson, were mentioned, and Speer. I cannot recall all that was said with reference to their connection with the company at that time. They were represented as directors, I think.

Plaintiff's Exhibit 128 I have seen before. I am not sure if this is the one that I saw at the time I subscribed, or if it came later. I don't think that thihs is the one that I saw when I subscribed. I think it was the other one. I may be mistaken on that.

Plaintiff's Exhibit 129 I have seen before. This, it seems to me, is the one I saw when I subscribed. Mr. Sidebotham showed it to me.

MR. WHEELER: We offer in evidence Plain-

tiff's Exhibit 129.

Plaintiff's Exhibit 129 was received in evidence, and is in words and figures as follows, to-wit:

(Here insert Ex. 129).

Plaintiff's Exhibit 128 I have seen before. I received it from the United States mails, in an envelope, addressed to myself, at St. Ignatius. It might have been addressed to Polson. Some of my mail was addressed to Polson, and forwarded from there down.

MR. WHEELER: We offer Plaintiff's Exhibit 128.

JUDGE SMITH: Same general objection.

I cannot tell exactly when I received this. Some-time that same spring, the spring of 1914.

Plaintiff's Exhibit 128 was received in evidence, and is in words and figures as follows, to-wit:

(Here insert Exhibit 128.)

How many talks I did have, how many conversations, with Mr. Sidebotham or Mr. Wilmot, or either of them, I couldn't say. I don't think I met them only two or three times after I subscribed, and but the one time when I subscribed. They gave me untill the first of May to make the first payment, payable in ten instalments of ten dollars a month. I have never paid it. Suit was brought in the Great Falls court three different times. There was a suit pending, the last time was just before this grand jury investigation. The pleadings are on file, and still pending.

Plaintiff's Exhibit 130 I have seen before, at St.



Ignatius, Montana. I received it from Great Falls, in the mails, from the St. Ignatius post office.

MR. WHEELER: We now offer in evidence Plaintiff's Exhibits 130 and 131.

JUDGE SMITH: We object to this, as incompetent, irrelevant and immaterial. Is Mr. Swiggart's name mentioned in the last count?

MR. WHEELER: No, sir.

JUDGE SMITH: If it isn't, I object, it doesn't tend to prove or disprove any issue raised by the indictment.

MR. KEELY: May we be permitted to aid to our objection on behalf of Rae and Alderson, the letter does not appear to have been signed by Mr. Rae, and has never been properly identified.

THE COURT: The objections will be overruled. Exception noted.

Whereupon said Exhibit 130 was received in evidence, and is in words and figures as follows, to-wit:

Ex. 130 Plff.

An Envelope.

Northern Trustee Company  
General Offices  
Great Falls, Montana. ..

Post-marked:  
Great Falls,  
Jun. 28-14  
6 P. H.  
Mont.

S. G. Swigart,  
Polson,  
Mont.

Two-cent U. S. postage stamp, cancelled.

Whereupon Plaintiff's Exhibit 131 was received

in evidence, and read to the jury, and is in words and figures as follows, to-wit:

NORTHWESTERN TRUSTEE COMPANY

Letter-head

June 27, 1914.

S. G. Swigart,

Polson, Mont.,

Dear Sir:

We cannot understand why you have not met your obligation with the Northwestern Trustee Company. This Company holds your promissory note, identical in force and effect with several hundred others, whereby you agree to assist in the building of a large mortgage loan company.

This note must be met and there is no way whereby you may be released of your obligation, as the law says that it is not fair and just for anyone to deside not to enter into a business after he has already done so.

If there is any point you do not understand or if there is any good reason why you should not pay us, this office would be glad to know of it.

With the success this corporation is attaining and the rapid development which is going on in the institution and the men now behind the institution, who are unquestionably among Montana's best men, we are at a loss to understand why you have not already met the above referred to obligation.

Kindly give us a reply by return mail in the enclosed envelope.

Yours very truly,

NORTHWESTERN TRUSTEE CO.

Per W. C. RAE,  
Secretary & Treasurer,  
C

Amount past due, \$40.00

Due July 15th, 10.00

---

\$50.00

Exhibits 133 and 132 I have seen before. I received them from Great Falls, in the St. Ignatius post office. I couldn't say how the envelopes were marked I think they were post-marked Great Falls.

MR. WHEELER: We now offer in evidence Plaintiff's Exhibits 132 and 133.

JUDGE SMITH: We interpose the same general objection.

THE COURT: What are these?

JUDGE SMITH: Two letters, one from Sidebotham, on signed Hoskins, to Mr. Swiggert.

THE COURT: Objection will be overruled.

Whereupon said Exhibit 132 was received in evidence, and is in words and figures as follows, to-wit:

Northwestern Trustee Comany  
(Incorporated) (Letterhead.)

Great Falls, Montana, February 12, 1914.

M. S. G. Swigart,

St. Ignatius, Montana.

Dear Sir:

Your favor of the 3rd has just been brought to my attention upon my return to this City. The request you make that your subscription and note for

Northwestern Trustee Company stock be cancelled is something that cannot be done.

We appreciate the kindness extended us by you and at that time I agreed to extend your note thirty days, and this letter will serve as a memorandum that you may have 90 days if you desire to continue your payments.

The Company is progressing rapidly and is in splendid financial condition as will be noted by a detailed statement of the Company sent. Jos. B. Thompson, St. Ignatius.

Kindly advise me when you will be able to commence making payments on stock.

Very truly yours,

Sidebotham & Wilmot,

Per Robert R. Sidebotham.

R. R. S.:JH

Whereupon Plaintiff's Exhibit 133 was received in evidence, and is in words and figures as follows, to-wit:

Northwestern Trustee Company  
(Incorporated) (Letter-head.)

Great Falls, Montana, May 16, 1914.

Mr. S. G. Swigart,  
St. Ignatius, Montana.

Dear Sir:

Your favor of May 14th duly received, and in looking over our correspondence with you, we find Mr. Sidebotham did extend your payments for 90 days, and fully explained to you at that time that it was impossible for us to cancel a subscription.

This has never been done in any case, as a man who subscribes to the stock pledges himself in a similar way to co-partners starting a business, and there is no reason why a man should decide afterwards he is not going to live up to his obligation, as others have and are doing.

We have always been lenient with our subscribers and we consider them co-partners, but there is one thing to retain they must eventually meet their notes. There is only one way they can be relieved and that is by having some one assume their obligations who is thoroughly responsible and acceptable to the Board of Directors.

The Northwestern Trustee Company is in splendid financial condition and is developing rapidly into what promises to be Montana's largest financial institution.

We are enclosing one of our new booklets and stockholders' lists which will give you some idea of the stability of this institution.

After an extension of 90 days on your note we shall expect a check for \$14.00 principal and interest now due on note.

Thanking you for giving this your prompt attention, we are,

Very truly yours,

Sidebotham & Wilmot,

J. Hosking.

Cross-Examination.

By Judge Smith:

I have an independent recollection of getting these



printed circulars from the mail, remember having actually received them and taking them out of the envelope. I was first induced to buy this stock when that larger circular with the pictures on was left with me. This one I feel reasonably sure I got out of the post office. I haven't paid for my stock, and don't propose to, if I can help it. They have sued me in Great Falls, and an answer has been put in, and the case is at issue down there. Nothing had been done toward forcing the case to trial since the board of directors came in.

That is my signature on Defendants' Exhibit 138.  
That is my signature on Defendants' Exhibit 139.  
That is my signature on Exhibit 137.

JUDGE SMITH: I offer these three letters in evidence.

Whereupon Defendants' Exhibit 137 was received in evidence, and is in words and figures as follows, to-wit:

Department of the Interior  
United States Reclamation Service.

From

to

Subject:

St. Ignatius, Montana, May 20, 1914.

Sidebotham & Wilmot

Sole Fiscal Agents Northwestern Trustee Co.,  
Great Falls, Montana.

Dear Sirs:

Yours of the 16th at hand. It may seem to you that I am merely dodging or attempting to dodge

the payment of my subscription but I can assure you positively that it is really impossible for me to meet that obligation at the present time at least and I would thank you most sincerely if you could release me in some way. I have no person in view who I think could or would take it off my hands but possibly you can find some one there who might be glad of the opportunity to get in on it.

Hoping to hear from you favorably very soon, I am,

Yours truly,

S. C. Swigart.

Whereupon Defendants' Exhibit 138 was received in evidence, and is in words and figures as follows, to-wit:

Subject.

Department of the Interior

United States Reclamation Service.

St. Ignatius, Montana, February 3, 1914.

Sidebotham & Wilmot, Special Fiscal Agents,

Northwesternr Trustee Co.

Great Falls, Montana.

eDar Sirs:—Owing to unforeseen and unexpected conditions, I find that it will be impossible for me to meet the conditions of my note for payment of stock in the Northwestern Trustee Co. and it therefore becomes necessary for me to request that my subscription for stock be cancelled and the note returned, at your earliest convenience. I am glad if my name has helped to secure other subscriptions and wish your company the best of success.

Please reply promptly as possible and greatly oblige,

Yours truly,

S. C Swigart.

Address as above, not to Polson.

Whereupon Defendants' Exhibit 139 was received in evidence, and is in words and figures as follows, to-wit:

Department of the Interior

United States Reclamation Service.

From

to

Subject.

St. Ignatius, Montana, May 14, 1914.

Sidebotham & Wilmot,

Sole Fiscal Agents Northwestern Trustee Co.,

Great Falls, Montana.

Dear Sirs:

Replying to yours of the 5th inst., I do not understand how you calculate that I owe you \$80 plus 5.33 interest on the 15th of this month. My subscription was for \$10 per month to begin Feb. 15, 1914, and in reply to my letter of Feb. 3, 1914, asking that my subscription be cancelled Mr. Sidebotham in a letter dated Feb. 12, 1914, agreed to extend the time of beginning payments to May 15, 1914, or 90 days longer than the subscription called for, in which case I would owe you \$10 on the 15th of May, 1914.

I repeat what I said in my letter of Feb. 3, 1914, that it is impossible, on account of previous obligations that I had overlooked in my calculations, to

meet the obligations of this subscription and again request that it be cancelled. Hoping that I hear from you favorably on this proposition very soon, I am,

Yours truly,

S. G. Swigart.

Please address me at St. Ignatius, Mont.

Plaintiff's Exhibits 134, 135 and 136 were identified by the witness, shown to him, but not offered in evidence.

— — —

Whereupon H. N. Black, a witness called and sworn on behalf of the Government, testified as follows:

Direct Examination.

By Mr. Wheeler.

H. N. Black is my name; Great Falls my residence; business is that of an architect I have seen Plaintiff's Exhibit 8.

MR. WHEELER: This is already in evidence. It is the subscription and note signed by Mr. Black, which had written across this note, "Payable in architect work."

I drew up plans for the Northwestern Trustee Company. They have blueprints and sketches which I made. I did about six weeks' or two months' work on the plans. No building was ever put up. I never paid any cash at all upon those notes. My labor is cash. The stock has never been issued to me.

Cross-Examination.

By Judge Smith:

I am ready and willing at any time to carry out my contract.

Witness excused.

— — —

Whereupon Mrs. Jennie Beyerlein, a witness called and sworn on behalf of the Government, testified as follows:

Direct Examination.

By Mr. Baldwin:

My name is Jennie Belerlein. I live at Stearns, Montana. Have lived there about eighteen years. Am acquainted with Robert R. Sidebotham and J. G. G. Wilmot. I think I met them in the year 1913, I think somewhere in that neighborhood, twice, and they wanted me to buy stock in the Northwestern Trustee Company. They told me the company was in good standing, and it was a very good proposition,, and that they would pay interest from the start. They promised eight per cent, and to go further up, as the company kept on. They told me that the stock would go up right along, that it would go up as far as thirty dollars pretty soon. They did not state any definite time when it would reach the price of thirty dollars, but they said that they expected that it would go right up. I paid for stock, five shares, twenty dollars for each share, but I didn't get certificates, I haven't got anything; have never received the certificate up to this time. I did call upon Sidebotham and Mr. Wilmot at their of-



fices in Great Falls. I went to Great Falls. They served papers on me for suit, they wrote me just two small letters, and they didn't write to me before that, and in just a few days served papers for a suit. I went to Great Falls. I went to their offices there. I went in there, there was only one girl in there, Miss Hoskins. I asked for Mr. Sidebotham. She told me he wasn't there, that he was home, his wife was sick, and he was there tending to her. Yes, sir, I met them both, Mr. Sidebotham and Mr. Wilmot, on that visit to Great Falls. I got their addresses and telephone number, I telephoned to Mr. Sidebotham's home. I went back to the office, and they was both in there, in about ten minutes; and Mr. Sidebotham then told me about his wife being sick. I told him that she answered the 'phone, and Mr. Sidebotham invited me into his room and called Mr. Wilmot in with him. I asked them why they sued me. They promised not to cause me any trouble. So Mr. Wilmot, he was kind of surprised that they had sued me, and Mr. Sidebotham said that there was so much owing to the company that they had to.

Mr. Wilmot told me that the stock at that time was worth thirty dollars.

JUDGE SMITH: I interpose a special objection to that, on the ground that these statements were all made after the transaction leading to the sale of her stock was entirely closed.

THE COURT: If she were here suing for her money, the objection would be good. The question

is a long course of conduct indulged in by the company, and these defendants. Anything that goes to show that, whether it is a dissatisfied subscriber or not, is material. The objection will be overruled.

Exception noted.

I did pay for the stock in that company, twenty dollars a share. I paid them one hundred and thirty-two dollars upon that account, in checks.

I have seen that paper before, Plaintiff's Exhibit 141. That is my signature upon the check. The check has been returned to me.

Exhibit 140, I have seen that check before. The signature at the bottom is mine. That check was returned to me.

Whereupon Plaintiff's Exhibit 141 was received in evidence, and is in words and figures as follows, to-wit:

Ex. 141.

Helena, Mont., Nov. 29, 1915.

No. 54

Conrad Trust and Savings Bank 93-18

Pay to

the order of Northwestern Trustee Co. \$112——

100

One hundred and twelve Dollars

Jane E. Beyerlein.

Indorsed: Pay to the order of

Conrad Banking Company, Great Falls, Montana  
Northwestern Trustee Co. W. C. Rae, Treasurer.

Pay to the order of American National Bank  
Helena, Montana.

Conrad Banking Co., Great Falls, Mont. 93-18

Aereican National Bank

Helena, Montana

Paid Through Clearing

House

Dec. 2, 1915.

2.

Whereupon Plaintiff's Exhibit 140 was received in evidence, and is in words and figures as follows, to-wit:

Ex. 140

Helena, Mont., Nov. 17, 1916      No. 51

Conrad Trust and Savings Bank 93-31

Pay to the

Order of Northwestern Trustee Co.,      \$20.00

Twenty Dollars.

Jane E. Beyerlein.

Endorsed: Pay to the order of Canrad Banking Company, Great Falls, Montana. Northwestern Trustee Co. W. C. Rae, Treasurer.

Pay to the order of American National Bank, Helena, Mont.

Conrad Banking Co., Great Falls, Mont. 93-18

American National Bank. Paid through Clearing House.      Dec. 2, 1915.

I have seen that paper before, Plaintiff's Exhibit 142. I first saw it in my home. I received it through the United States mail. 142

Whereupon Plaintiff's Exhibit ~~124~~ was received in evidence, and is in words and figures as follows, to-wit:

Northwestern Trustee Company

(Incorporated)

(Letter-head.)

Great Falls, Montana, November 13, 1915.

Mrs. Jane E. Beyerlein,

Stearns, Montana.

Dear Madam:

The writer has been away from Great Falls practically ever since you were here until a few days ago. I am much surprised to learn that you have not sent in the abstract and papers pertaining to the loan on your land as was discussed fully at the time you were here.

The following is due from you at the present time:

Principal on note.....	\$ 70.00
Interest on note to date.....	12.00
Filing suit, .....	5.00
Sheriff's fee, .....	15.00
Attorney's fees, .....	30.00
<hr/>	
	\$132.00

You will remember, Mrs. Beyerlein, when you were here we said if you settled this matter up at once, it would be possible to reduce the costs, but to our disappointment you did not do so. The matter is now to a point where the attorney can take judgment against you for the full amount with costs and additional costs to those set forth.

In all fairness to you the writer has taken the liberty to write you this letter to see if the same cannot be settled without our taking judgment and forcing the sale of your property. In a case of this

size it is hardly worth while as the procedure of the courts is always so expensive, but unless we receive a check from you within the next few days, it will be necessary for our Attorney, Mr. Church to take judgment.

Hoping that you will be able to take care of this matter so that further legal proceedings will not be necessary, we are,

Very truly yours,

Robert R. Sidebotham.

P. S. If you still desire the loan we will be glad to make it, but we must know your decision at once.

I received the paper marked Plaintiff's Exhibit 143; but I cannot exactly say the date I first saw it, but it came in the mail with other literature, at Stearns, Montana.

MR. BALDWIN: We will now offer Exhibit 143 in evidence.

JUDGE SMITH: Same general objection.

THE COURT: What is the nature of this one? Let me see it.

MR. BALDWIN: I think, if your Honor please, that no other copy has got in; I don't recall any at this time, of that particular circular or letter. Your Honor will notice that it is a later date than any of the others.

THE COURT: The objection will be overruled. Exception noted.

Plaintiff's Exhibit 143 was received in evidence, and is in words and figures as follows, to-wit:

(Here insert Ex. 143.) Ex. 143 is identical with



exhibit 122 on page...367.

## Cross-Examination.

By Judge Smith:

My notes were each twenty dollars apiece, five notes. This seventy dollars is their calculation. I live eight miles from Stearns. I did not give one note for seventy dollars and one for twenty. I remember one of the ranchers coming and serving me with a summons, and after that I went to Great Falls, and saw Mr. Sidebotham and Mr. Wilmot. They did not show me any figures. They didn't show me that the notes amounted to seventy dollars, and the interest five dollars, and the filing fee five dollars, sheriff's fee fifteen dollars, and attorney fees of thirty dollars, making a total of a hundred and thirty-two dollars, just the amount of these two checks. They didn't show me any figures of that kind. They did not give me this information. They did not figure it up, how I owed them one hundred and thirty-two dollars. They made it thirty dollars more, they put that expense on it; they wanted thirty dollars more. Once they demanded that thirty dollars since. They have not told me that the reason I haven't got the notes or stock is that there is a thirty-dollar note due still outstanding against it. No, I have no letters this year from them, anybody connected with the Northwestern Trustee Company.

Q. I wish you would explain to me, if you can, what your understanding was as to how they could sue you for seventy dollars, when the notes you gave them were all for twenty dollars a piece.

MR. WHEELER: That is objected to, as improper cross-examination, and calling for a legal conclusion.

THE COURT: She does not need to explain. She has not any explanation. She states the fact. Objection sustained.

Exception noted.

THE COURT: The objection is sustained, and exception noted.

They stopped with me all night, four of them. I gave them a room for each couple. They said that they considered the company was in good standing, Mr. Sidebotham and Mr. Wilmot. They both said that. They told me they thought it was a good proposition. They told me everything was right, and they thought it was a very good investment, and that we couldn't lose. They did not show me any of this literature that has been introduced here, or any pamphlets or circulars, or anything like that; just the notes. Mr. Sidebotham sat down and just filled up the notes. I told them before that I didn't want to have anything to do with notes. They filled them out anyway, and got talking. I finally signed them, after he talked until midnight. I have some property up there of my own, yes, sir, that I inherited from my first husband.

When I went to Great Falls, after they started that suit, I didn't want them to bring a suit against me. I went up to them and talked to them, and of course I was paying eight per cent on their note. I told them if they would lend me that \$100.00 for

a short time, I would pay interest on it. They told me that they didn't lend no personal money on notes. No, they told me they didn't lend money of that kind; Mr. Wilmont said how it would be if you borrowed some money and spent it in stock. Well, I said that would be all right, and then we talked away, and he gave me a paper, and it was filled out, but I found out that I didn't care to have the money from them. That is not the reason I didn't send them my abstract. I didn't want the money, I wanted to do without it. Mr. Sidebotham told me that he would get an abstract of title of my land, and he was going to pay for it. They were going to make me the loan on my land. Well, they said they could lend a thousand or two thousand or three thousand, if I wanted it. No, sir, I gave the papers that the rancher brought there to Mr. Sidebotham and Mr. Wilmot, took it up to their office, and they took it.

— — —

Whereupon William A. Robert, a witness called and sworn on behalf of the Government, testified as follows:

Direct Examination.

By Mr. Murphy:

My name is William A. Robert. I live at Sommers, Montana. Have lived there for the past ten years. I am a common laborer. I purchased stock in the Northwestern Trustee Company.

Q. And when did you purchase it?

JUDGE SMITH: That is objected to, if your

Honor please, for the reason that this man's is not mentioned in any of the counts in the indictments; it is an attempt to prove an independent offense.

THE COURT: Objection overruled.

Exception noted.

I bought the stock in February, 1914, February 25, I think it was, of the defendant, Rainwater, in this case. The purchase was made up in Stillwater, about twelve miles west of Whitefish. Mr. W. W. White was with him at that time. To the best of my recollection I think I talked entirely with Mr. Rainwater. He represented them at that time to be paying, on a profit basis, and I objected to the paying of interest on a note, where I thought it was paying interest upon my own money. Mr. Rainwater represented at that time that the company was on a dividend-paying basis, and it was no more than fair to pay interest upon my note, as the company was at that time earning dividends, than what would be for the man that was paying cash for his stock. You see, I gave a note for my stock. I think there was a balance for \$180.00. I bought ten shares and paid for them twenty dollars, and a note for one hundred and eighty dollars. I have since that time paid the note and received the stock. I was to receive dividends. At that time the company was supposed to be on a dividend basis. I don't just remember now, I couldn't answer that, how often the dividends would be paid. Well, the dividends were supposed to be better than eight per cent.

Mr. White did not take part in any of these talks.



Mr. Rainwater made them all. I don't remember if at that time anything was said to me about assets the company had at that time. It seems that I asked that question of Rainwater, about the par value of the stock, but I couldn't be positive now, it is so long ago. It seemed to me I asked Mr. Rainwater the par value of the capital stock. He told me it was twenty dollars, but afterward I received a letter from the Northwestern Trustee Company stating that the par value of the capital stock was ten dollars and the other ten dollars went into reserve fund, per share. I don't think I ever at any time had any talks with any other person who was an officer or connected with the Northwestern Trustee Company about my stock.

I identify Plaintiff's Exhibit 144. I received that, I think, at Sommers, through the U. S. mail, at Sommers, Montana.

MR. MURPHY: I offer it in evidence.

JUDGE SMITH: I object to it, as immaterial, because there is no such charge in the indictment.

THE COURT: Overruled.

Exception noted.

Whereupon Plaintiff's Exhibit 144 was received in evidence, and is in words and figures as follows, to-wit:

Northwestern Trustee Company  
[Incorporated) (Letter-head.)  
Great Falls, Montana.

To the Stockholder or Subscriber Addressed:

On account of the many inquiries received from



our stockholders with reference to the surplus account of the Northwestern Trustee Company, will state that the stock of the Company sells at \$30.00 per share, although the par value is \$10.00. Each stockholder will, however, earn dividends on the total assets of the Company, which includes the surplus as well as the capital.

It is customary with all investment and financial concerns to start business with a surplus fund. It was deemed advisable by our Board of Directors to offer the stock at a premium, thereby creating a surplus fund and placing our company on an equal basis with these institutions. Should our Company have sold its stock at par, it would possibly have taken years to build up a surplus and put it on a competitive basis with other institutions of the country.

Trusting that it is fully clear to you why the par value is \$10.00 and the selling price \$30.00, we are,

Yours very truly,

Northwestern Trustee Co.

I received them before I finished paying on the note, I remember that. Well, I forget, my last payment on the note; it seems it was thirty or forty dollars, about fifteen months after the note was due, and this was subsequent to the time that I subscribed for the stock that I paid for the stock.

Cross-Examination.

By Judge Smith:

I bought ten shares at \$20, paid \$20, and I gave him my note for \$180. I did not sign a subscription

blank similar to one of these. I signed something in the way of a subscription for the stock.

Mr. Whihte sold nothing to me, simply Rain-water. I objected to paying interest. The interest was to be charged because the company's money would be loaned out at eight per cent, and if I had paid my subscription in cash, my money would have brought in that much at eight per cent; something to that effect.

Witness excused.

Whereupon J. A. Ebau, a witness called and sworn on behalf of the Government, testified as follows:

Direct Examination.

By MR. WHEELER: My name is John A. Ebau. I am in the hide and fur business. I reside at Malta, Montana, Phillips County. I have resided there for 23 years. I have had occasion to purchase some stock in the Northwestern Trustee Company, from Mr. Wilmot. Mr. Wallace Coburn introduced me at first, and he and I were alone afterwards. He said it was a good investment, and he advised me to get hold of it. He said that they would pay dividends, if I would take hold of that stock there it would be paying dividends before the first of the year. Oh, I don't remember just the month or the day now I had this conversation with him, or that I purchased this stock. That was 1913, right after shearing time, some time after shearing, sometime in October, September or October. I wouldn't say as to the exact month; it was after

shearing. He said he had some of the most prominent men in the State at the head of the company; he said it was a good thing. I gave him a check for \$50, and I gave him a note for the balance of the stock. I paid him \$20 a share for twenty-five shares.

Plaintiff's Exhibit 145 I have seen before. It is my check for \$50.00 for part payment on that stock.

MR. MURPHY: We now offer in evidence this Plaintiff's Exhibit 145.

Whereupon Plaintiff's Exhibit 145 was received in evidence, as follows:

Malta, Mont., October 14, 1913.

First National Bank.

Pay to the order of Sidebotham & Wilmot \$50.00.

Fifty and no/100 Dollars.

J. T. EBAU.

Indorsed: Sidebotham & Wilmot, Per R. H. Atkinson.

Endorsement guaranteed, Conrad Banking Co., Great Falls, Montana.

Pay to the order of any Bank, Banker or Trust Co.

Previous endorsements guaranteed Oct. 24, 1913.

American National Bank, 93-28 Helena, Mont., 93-28; N. J. Gould, Cashier.

Pay to the order of Stockmen's National Bank 93-100, Ft. Benton, Mont.

Conrad Banking Co., Great Falls, Mont., 93-18.

He said it would be worth a good deal more money in a short time; they had figured on raising

the price of the stock in a short time. Subsequent to that I had occasion to write to Mr. J. W. Spear. I don't remember the month; I think it was in 1915. In reply to that communication or letter I received a reply, Plaintiff's Exhibit 46 is the one that I got in reply. I received it at Malta, Montana.

Whereupon Plaintiff's Exhibit 146 was received in evidence, and is as follows:

J. W. Spear

Attorney at Law

First National Bank Building,

Great Falls, Montana, February 26, 1915.

Mr. J. A. Ebaugh,

Box 565, Malta, Montana.

Dear Sir:

Replying to your letter of February 23rd, relative to the Northwestern Trustee Company, will say that I have paid for my stock in full in that company and have no particular kick coming at this time. There was a time when I did think things were not right, and, in fact, knew they were not. A lot of options and contracts have been granted and selling agents were getting all of the money, and the stockholders practically getting nothing. This matter has all been remedied, however, and all options and contracts have been cancelled and the Fiscal Agents have been required to return to the company all moneys received on account of any options granted, except the regular commission. The company is now in good shape and I am perfectly satisfied with the conditions as they now exist.

As to any representations which might have been made to you by the agent, I might say that this would have no effect upon the company, as at the time you bought your stock you signed a contract, and in that contract were embodied the words that no representations made by any agent of the company other than those embraced in this contract would be binding on the company. This bars you from making any objections to the company direct. I do not know what representations might have been made to you, and for that reason am not in a position to advise.

I had a long talk with Mr. Newman and he will write you.

Yours very truly,  
J. W. SPEER.

#### Cross-Examination.

By JUDGE CALAWAY: The gentleman mentioned in that letter was Mr. Louis Newman, the gentleman who was here as a witness. I had a conversation with Mr. Newman some time prior to the time I wrote that letter to Mr. Newman.

Q. After your conversation with Mr. Newman, how soon did you write the letter to Mr. Spear?

A. Just a short time after that. I don't remember how long, not very long; possibly a week or more. I was talking to Mr. Newman in Havre about the condition of the concern. It was through his advice that I wrote to Mr. Spear. I think that the letter that Mr. Spear wrote me was in reply to the



one that I wrote him. I think Mr. Newman wrote me also.

Cross Examination.

By JUDGE SMITH: My indebtedness to the company has never been adjusted. They took a judgment against me for the balance of the note.

Q. And you finally adjusted it?

A. Sir? I never paid up the judgment. It is still pending against me. That is all I paid down, \$50. I gave them a note for the balance, and never got the stock.

Witness excused.

Whereupon Isabelle Manly, a witness called and sworn on behalf of the Government, testified as follows:

Direct Examination.

By MR. WHEELER: My name is Isabelle Manly. I reside at Townsend. Have resided there twenty-five years. Am acquainted with Mr. Sidebotham and Mr. Wills. I first met Mr. Sidebotham in March, 1915, at my home near Townsend. I did not have any conversation with him at that time with reference to stock in the Northwestern Trustee Company, not that day exactly. We were trying to get a loan. Well, in a day or two afterwards we did have a conversation with reference to the Northwestern Trustee Company, and I purchased stock in the Northwestern Trustee Company, at thirty dollars, five shares. They said it was a good stock, and some of the most prominent men of the state were interested in the stock, and things like

that. They said it would pay good dividends. Well, I expected to get interest right away. I don't know exactly just what they did say. They said they thought it would pay as high as thirty per cent after awhile. They said they were paying at that time eight per cent. I did apply to the company for a loan. Well, they said they thought they could let us have the loan, but I would have to take some stock in the company first. I didn't want to take any stock because I didn't think I could spare the money. I told them I didn't think that I could take but one share. They said that one share would not amount to anything, I would have to take more, so I took five shares. I subsequently got a loan. We wanted the loan for five years. We would have to pay eight per cent. There was not to be any other charges. The appraisement of the property was mentioned. It was said that some of the stockholders in that neighborhood could appraise the property. We had four of the stockholders appraise it. Mr. Alderson came out to appraise it. There was not to be any charges made for appraisement. I gave a mortgage on that property. I finally signed the mortgage for seventy-five hundred dollars. Well, I guess it was fifty-four hundred and thirty dollars that I got.

Plaintiff's Exhibit 153 I have seen before, also Plaintiff's Exhibits 147, 148 and 149. I got them from Great Falls. We get our mail at the gate every morning. These came through the mails. There is a rural free delivery there.

Whereupon Exhibit 147 was received in evidence, as follows, to-wit:

Northwestern Trustee Company (Letter-head.)

Great Falls, Montana, August 1, 1915.

To the Stockholders addressed:

Enclosed find notice of the annual meeting of the stockholders of the Northwestern Trustee Company. It is essential that a majority of the paid-up stock be represented at this meeting either in person or by proxy.

We are enclosing herewith proxy made in the name of one of the stockholders, who is also a director. If you prefer, you may insert the name of any other officer or stockholder to represent you.

Should it be impossible for you to be present, we will appreciate your signing the enclosed proxy and sending it in by return mail.

Yours very truly,

NORTHWESTERN TRUSTEE CO.,

Wm. C. Rae, Secretary.

Plaintiff's Exhibit 148 was received in evidence, as follows, to-wit:

Exhibit 148 Plff.

Irrevocable Proxy.

In consideration of One dollar to me hand paid, receipt whereof is acknowledged, I, Isabel Manley, of Townsend, Montana, do hereby appoint R. R. Sidebotham of Helena and Great Falls, Montana, my true and lawful and only attorney in fact and agent with an interest to vote 5 shares of the capital stock (being all of the stock of this corporation

owned by me) of the Northwestern Trustee Company, a Montana corporation, at all stockholders' meetings that may be held within one year from the First day of August, 1915. This power of attorney is irrevocable in such time. The power is only to vote such stock.

Dated this ..... day of .....,  
1915.

Witness:

-----  
Plaintiff's Exhibit 149 was received in evidence,  
as follows, to-wit:

Exhibit 149 Plff.

Notice.

Of Stockholders' Meeting of the Northwestern  
Trustee Company.

The third annual meeting of the stockholders of the Northwestern Trustee Company will be held on Wednesday, the 11th day of August, 1915, at the hour of 10 o'clock A. M., at the office of the Company in the Ford Building, in the City of Great Falls, Cascade County, Montana, for the purpose of electing the Board of Directors, receiving and acting upon the reports of officers and for the transaction of such other and any and all business that may come before the said meeting.

Dated this 1st day of August, 1915.

WM. C. RAE,  
Secretary.

Plaintiff's Exhibit 150 was received in evidence,  
as follows, to-wit:

Exhibit 150 Plff.

Northwestern Trustee Company. General Offices  
Great Falls, Montana.

Cancelled U. S. Two-Cent Stamp.

Great Falls

Jul 31-15

4—PM

Mont.

ISABEL MANLEY,  
Townsend, Montana.

— — —

Cross-Examination.

By MR. KELLY: I talked with Mr. Alderson during his visit down there when his wife and his children were with him. Just had a discussion about the loan, is all. I don't think he talked with me about the amount of the loan which I wanted. I think we made that through the company, Mr. Sidebotham.

My brother took some stock in the company, and my sister took some of the stock, and I took some stock; and it made only fifty-four hundred dollars. We got only sixty-five hundred dollars. No, all they let us have was sixty-five hundred dollars. We took the stock out of the sixty-five hundred dollars and it made it only fifty-four hundred and thirty dollars. On that sixty-five hundred dollars I was to pay eight per cent interest. Instead of drawing the note for sixty-five hundred dollars, for five years, at eight per cent, they drew for five years on seventy-one hundred dollars at six per cent



interest. And they figured it out so that I would have to pay just the same amount on the note, as if it was drawn for sixty-five hundred dollars at eight per cent. I got every dollar that I was entitled to in accord with the agreement that I had with these men. I didn't have any discussion with Mr. Alderson about the company or its organization—not very much. I don't recall that he did tell me anything about the company at the time that he was down there.

Cross-Examination.

By JUDGE SMITH: Well, we figured to get the affairs straightened up. All the heirs wanted to get the property settled up, and we were anxious to get it, so that we took this mortgage that way. We really didn't want it that way because it was \$195.00 more than we really had ought to pay. I think if we had just got \$6,500.00, and had paid eight per cent, that we would have been better off than at six per cent on the \$7,100.00. I never figured it very much myself. My sons figured it mostly for me, before and since I signed it. I signed that mortgage after my sons figured it up for me. I still owe that note and mortgage.

— — —

Whereupon B. F. Johnson, a witness called and sworn on behalf of the Government, testified as follows:

Direct Examination.

By MR. WHEELER: My name is B. F. Johnson. I reside at Warm Springs. I have resided

there since 1880. I have had occasion to have dealings with the Northwestern Trustee Company, a little bit. I got ten shares, at \$30.00 a share, or agreed to. Talked to Sidebotham and Wilmot, I believe. I don't remember now.. It seems to me like they represented the company would pay 20 per cent. I don't think they mentioned as to who was back of the company. I don't remember the date I first took the stock; I think it was some time in November, 1914.

I am acquainted with A. M. Alderson. Have known him for the last two or three years, may be longer; I don't know. I have known him since he has been Secretary of State.

Plaintiff's Exhibit 151 I have seen before. It was left laying on my desk at home, by Sidebotham and Wilmot, or Sidebotham.

I have seen Plaintiff's Exhibit 152 before; saw it at the same place.

MR. WHEELER: We now offer Plaintiff's Exhibits 151 and 152.

JUDGE SMITH: We object to Exhibit 152, as incompetent, irrelevant and immaterial, and not tending to prove any issue in this case, not having been sufficiently identified, and it seems to be a mere fugitive document; that there is no testimony in relation to it whatever, and a copy. The other one I object to as incompetent, irrelevant and immaterial, not tending to prove any issue in this case.

THE COURT: There will be a serious question before this case is through as to whether there has

been a proper showing that these papers were sent out of the company's office. Will you produce copies of their files, or prove it by their employees?

MR. WHEELER: I expect to connect this up.

JUDGE SMITH: I desire to add to my objection to Exhibit 151, it appears to be a personal letter written by R. R. Sidebotham, and its production here violates his constitutional right. A defendant cannot be forced to give evidence against himself. And also his constitutional right to be immune from unreasonable searches and seizures.

THE COURT: As far as his constitutional right is concerned, if he doesn't want to get this evidence in, you should not have given this letter to this witness. As I understand the matter, this defendant, Sidebotham, left this matter with this witness.

MR. WHEELER: That is the testimony, your Honor.

MR. GALEN: Your Honor, may I ask the witness a question?

THE COURT: You may.

Q. (By MR. GALEN): Mr. Johnson, you say you found the Exhibits, numbers 151 and 152, on your desk?

A. Yes, sir, if I remember right, they were left laying there on my desk; at my house, on the ranch near Warm Springs. Mr. Sidebotham and Wilmot left them there. It was the day that I found these three notes, that I found them laying on the table, they were left there with some other papers. I think I looked over them, before I signed the notes. I am

now positive that these two exhibits 151 and 152 were left there by Mr. Sidebotham and Mr. Wilmot.

THE COURT: The objection will be overruled.  
Exception noted.

Whereupon Plaintiff's Exhibit 151 was received in evidence, and is as follows, to-wit:

Exhibit 151 Plff.

Northwestern Trustee Company. (Letter-head.)  
(Incorporated.)

Great Falls, Montana, October 9, 1914.

Mr. R. R. Sidebotham,

Deer Lodge, Montana.

Dear Mr. Sidebotham:

We beg to advise you that we are this day in receipt of a subscription from C. F. Carrere, Butte, Montana, for \$34,390 worth of stock. Every day shows a rapid increase in our sales.

We wish to remind you to send in any applications you have for loans in your direct promptly.

We are,

Very truly yours,

NORTHWESTERN TRUSTEE COMPANY,

Per A. M. Alderson,

JH Pres.

— — —

Whereupon Plaintiff's Exhibit 152 was received in evidence, and is as follows, to-wit:

Exhibit 152 Plff.

Extract.

Sworn Affidavit.

State of Montana,  
County of Cascade.

R. H. Atkinson, being first duly sworn on oath deposes and says that he is Assistant Secretary of the Northwestern Trustee Company; that as such officer he has charge of the books and papers of the Company; that the Northwestern Trustee Company has not given away or gratuitously disposed of any stock for imaginary services for the use of names of official titles of men; that in options, contracts, notes receivable in cash, the sales have amounted to over \$580,000.00.

R. H. ATKINSON.

Subscribed and sworn to before me this seventh day of February, A. D., 1914.

DUDLEY CROWTHER.

Notary public for the State of Montana, residing in Great Falls, Montana. My commission expires December 26, A. D., 1914.

— — — — —

Whereupon Plaintiff's Exhibit 154 was received in evidence, as follows, to-wit:

(Here insert Plaintiff's Ex. 154.)

Ex. 154 is identical with exhibit 90 on page 318

— — — — —

I never did pay for my stock. I have seen something similar to this, just the same as Plaintiff's Exhibit number 153. It come through the United States mail at Warm Springs. I think I received it. I am not sure now. Yes, I have seen one just like it, Plaintiff's Exhibit 154.



## Cross-Examination.

By MR. GALEN: At the time that I subscribed for these ten shares of stock I was satisfied with my investment. That was before this indictment was started. The fellows at Warm Springs were trying to get their money back that they had pre-paid in, then I begun to get leary, I didn't want to pay my note. I was not sued upon my note, not that I know of. To this day I have never paid my obligations.

## Cross-Examination.

By JUDGE SMITH: It was some little time ago, 1914. I don't, of course, remember all the details of what was said there that day. I didn't pay but very little attention to it. I don't remember what was said. I have a recollection they claimed it would pay about 20 per cent, the same day I signed the note. No, sir, I never paid a cent on them, at all. The notes are still outstanding and unpaid.

Witness excused.

— — — —

Whereupon J. A. Urbenowicz, a witness called and sworn on behalf of the Government, testified as follows:

## Direct Examination.

By MR. WHEELER: My name is J. A. Urbenowicz. I am fiscal agent of the United States Forest Service. I handle the finances for the Forest Service of the United States Government. I am acquainted with Mr. Sidebotham. I met him

first some time in December, 1914. I think he desired to sell stock in the Northwestern Trustee Company. He did sell it to me, at thirty dollars, twenty shares. I did pay for it. I paid three hundred dollars in cash, and signed a note for three hundred dollars. He made the statement that the company would earn dividends of at least eight per cent, and they would be paid in August, 1915. Also made a statement that there were a good many prominent stockholders in the company, and showed a list. He showed us a list. Oh, I think Ex-Governor Norris, Alderson, Rae, Mr. Gibson, and other prominent officials were on the list. Why, I think he told us that the stock would go up to \$40.00 or \$45.00 as soon as they spread into the surrounding states. They mentioned Messrs. Alderson and Rae as directors. I think they represented the stock as being very safe, and that it was certified to by the Secretary of State, in addition to the usual business procedure; that the stock certificates were certified to by the Secretary of State. Yes, sir, they were placed on file with the Secretary of State before they reached the stockholders. Mr. Sidebotham said that.

I have seen Plaintiff's Exhibit number 155 before. I saw it at Missoula, Montana, at the Federal Building. Got it through the United States post office, through the United States mail. I believe that was in the envelope that was attached to it.

MR. WHEELER: We now offer in evidence Plaintiff's Exhibits, number 158, 155 and 156.

JUDGE SMITH: We object to that, as incompetent, immaterial and irrelevant, not tending to prove any of the issues in this case.

THE COURT: Many of these letters are of minor importance, but they all go, or tend, to support the charge of a scheme to defraud, in which the mails were used, in furtherance of a scheme to defraud. If the scheme is proved, why, this would be a part of the evidence to show that the mails were used. The objection will be overruled.

Exception noted.

Whereupon Plaintiff's Exhibit 155 was received in evidence, read to the jury, and is as follows, to-wit:

(Envelope)

Northwestern Trustee Company  
General Office Great Falls, Montana.  
Great Falls Oct. 12-15, 7—PM, Mont.  
United States Postage Stamp.

MR. T. A. URBANOWICZ,  
Missoula, Montana.

c/U.S.F.S.

— — —

(Letter-head)

Northwestern Trustee Company  
(Incorporated)  
Great Falls, Montana, October 12, 1915.  
Mr. J. A. Urbanowicz,  
Missoula, Montana.

Dear Sir:

We are in receipt of your letter of the 8th inst.,

regarding the payment of a dividend on your stock. When a dividend is declared, it will be declared by our stockholders. There were a number of them present this year at the meeting, and while our Surplus and Undivided Profit account showed a balance of over \$17,000, which would have enabled us to pay a dividend, they deemed it best to use the money for loans, etc., for at least another year. When a dividend is paid, it will be paid from the time you subscribed for your stock, we, therefore, ask that you remit the \$19.35 interest asked for without further delay, so that this transaction may be closed.

Thanking you, we are,

Very truly yours,

NORTHWESTERN TRUSTEE COMPANY,

Per M. A. CORT,

Asst. Treas.

Whereupon Exhibit number 156 was received in evidence, and is in words and figures as follows, to-wit:

PLAINTIFF'S EXHIBIT NO. 156.

NORTHWESTERN TRUSTEE LETTERHEAD.

October 12, 1915.

Mr. J. A. Urbanowicz,

Missoula, Montana.

Dear Sir:

We are in receipt of your letter of the 8th inst. regarding the payment of a dividend on your stock. When a dividend is declared, it will be declared by our stockholders. There were a number of them

present this year at the meeting, and while our Surplus and Undivided Profit account showed a balance of over \$17,000, which would have enabled us to pay a dividend, they deemed it best to use the money for loans, etc., for at least another year. When a dividend is paid, it will be paid from the time you subscribed for your stock, we, therefore, ask that you remit the \$19.35 interest asked for without further delay, so that this transaction may be closed.

Thanking you, we are,

Very truly yours,

NORTHWESTERN TRUSTEE COMPANY.

Per M. A. CORT,

Asst. Treas.

— — —

Whereupon Exhibit 157 was received in evidence, read to the jury, and is in words and figures as follows, to-wit:

(Envelope)

Northwestern Trustee Company

General Offices Great Falls.

Great Falls Oct. 6, 15, 5 PM, Mont.

United States Postage Stamp.

MR. J. A. URBANOWICZ,

Missoula, Montana.

Whereupon Exhibit 158 was received in evidence and is in words and figures as follows:

NORTHWESTERN TRUSTEE COMPANY

LETTERHEAD.



MR. J. A. URBANOWICZ,  
Missoula, Mont.

Dear Sir:

We acknowledge receipt of your letter of the 4th enclosing check for \$300.00. This pays the principal, but the note bears interest at 8% from December 16, 1914. This interest to date amounts to \$19.35 to date. Upon receipt of same your cancelled note and stock will be mailed to you.

You probably do not understand that your stock was issued December 16, 1914. It has been held as collateral to your notes. As you are receiving the same benefits as though you had paid all cash at the time you gave your subscription, interest is charged on the amount unpaid. All notes given for stock bear 8% interest.

Trusting that the matter is clear to you, we are,  
NORTHWESTERN TRUSTEE CO.,  
Per M. A. CORT,  
Asst. Treas.

— — — —

I have seen Exhibit 159 before, in the Federal Building, Missoula, Montana. It was given to me personally by Mr. Sidebotham. I think it was on the first day or the second day that he talked to me in connection with purchasing the stock.

MR. WHEELER: Now this is the same one that has been introduced, but it is simply for the purpose of showing the matter. We offer it in evidence.

JUDGE SMITH: We object for the same rea-

son stated the last time.

THE COURT: Objections overruled.

Exception noted.

MR. WHEELER: Plaintiff's Exhibit number 159 is this pamphlet, on the outside cover bearing as follows:

"Northwestern Trustee Company, Capital and Surplus over \$500,000.00, Great Falls, Montana." The rest is like another exhibit of this same pamphlet.

Plaintiff's Exhibit 160 I have seen before. The pamphlet was enclosed in Plaintiff's Exhibit 161, I believe.

MR. WHEELER: We now offer Plaintiff's Exhibits 160 and 161.

JUDGE SMITH: The same general objection.

THE COURT: The objection overruled. Exception noted.

Ex. 161 Plff. (Envelope)

Sidebotham & Wilmot, Fiscal Agents

Northwestern Trustee Company

General Offices Great Falls, Montana

(Cancelled 1c stamp)

Postmarked "GREAT FALLS, MONT."

J. A. URBANOWICZ,

Missoula, Mont.

Plaintiff's Exhibit 162 I have seen before. I saw it in the Federal Building at Missoula. It was delivered personally to me by Mr. Sidebotham.

MR. WHEELER: We now offer in evidence Plaintiff's Exhibit number 162.

(Here insert Ex. 162.)

Plaintiff's Exhibit 163 I have seen before. I think this was handed to me personally by Mr. Sidebotham. I am not certain.

Plaintiff's Exhibits 165 and 166 I believe I have seen before. I think they were handed to me by Mr. Sidebotham. That is my recollection. I am not sure about that. I may have received them in the mail. I received quite a lot of literature.

MR. WHEELER: We will now offer them.

Admitted without objection.

Cross-Examination.

By JUDGE SMITH: I know Mr. Wills. Mr. Wills was with Mr. Sidebotham. He did not take any part in the conversation, to any great extent. Mr. Sidebotham did all the talking, that is, most of it. He said the company would earn eight per cent dividends, to be paid in August, 1915. He said that on the evening of the day I bought the stock. I think it was December 14th or 15th.. I am not sure of the date. I did expect to get the full dividend of eight per cent, by investing in December and getting a dividend in the following August. I am thirty-nine years old. Have never been a promoter. I had had an idea of doing something along those lines. I didn't consider it a promotion scheme. I wouldn't call it the same. I think it was the second or third day after he first saw me that I subscribed. I am not positive. But in the meantime he left his literature with me. Exhibit 93, he left a copy of that with me. I examined it. Afterwards I en-

deavored to have my stock certificate canceled, and the three hundred dollars returned. I put that in writing under date of May 6, 1915. I did not receive any commission or any portion of the selling agent's commission, on stock of the Northwestern Trustee Company. Well, I don't think I did endeavor to sell any to my associates in the Forest Service. After closely examining the literature he left, I bought the stock on my own judgment.

Defendant's Exhibit 167 is my handwriting. That is my signature. I wouldn't call it indirect interest I had in the sale of some of this stock. The proposition appealed to me as a good business venture. I had in mind the severing of my connection with the Service, to go into commercial life. I have been connected with the Forest Service nine years. I was connected with the Federal Department of Commerce and Labor. My profession or business I would call that of fiscal agent. Exhibit 167 for Defendants was received in evidence, and is as follows:

Exhibit 167 Deft.

Missoula, Montana, Jan. 21, 1915.

Mr. R. R. Sidebotham,

Great Falls, Mont.

Dear Sir:

Your letter of January 18th is received. I was, indeed, very sorry not to have seen you again, had a few propositions I wanted to discuss. The list you speak of is ready, but for several reasons I decided not to forward it until a question, which is un-



der consideration here, is settled. Several of the more prominent members of the Service have in view the organizing of a company for the mutual benefit of all the employees. The Service has on its register a good many permanent names and this number is increased during the fire season. During the summer of 1910 I had on my pay rolls more than 20 thousand names, during the summer just past I had between 8 and 9 thousand. It is true a good many were of the floating class, but in the main most of them were responsible merchants, ranchers and farmers assisting us.

This condition exists in all of our districts, covering the entire Northwest. If this company is organized some one person will be asked to handle it and from present indications it looks as though the work will be shifted to me. However, nothing definite has been outlined, and with the advent of your company, am rather inclined not to push this other proposition, but devote my time and influence to building up the Northwestern Trustee Co. In the business world a man's character, influence, experience and time are worth something to any organization. My buying stock in your company was the result of my own judgment, consequently consider myself only a passive stockholder. Am willing, however, to devote all my spare time and influence to furthering the interests of the company. Ideas which I have had in mind could easily be used in connection with the work and the list I have with others from our six other districts would be used



as a basis for my operations. Your offer of 2% commission on sales does not meet my requirements, have considered this question from all angles and find that in so far as I am concerned there is a good bit at stake. Have been in the Service a good many years and feel that I have the full confidence of all the men in it, which is one of the greatest assets a man can have. If, after fully considering this letter you feel inclined to submit another proposition, I shall be pleased to receive it.

Very sincerely yours,

J. A. URBANOWICZ.

— — —

By MR. WHEELER: The reason I tried to cancel my certificate was a rumor to the effect that the company was not being run on right principles. Mr. Sidebotham offered me two per cent commission in a letter he wrote me.

Re-Cross-Examination.

By JUDGE SMITH: I had two reasons for my refusal to pay the note, on a request that it should be canceled. It was rumored that it was not run on proper lines.

Defendants' Exhibit 168 bears my signature.

JUDGE SMITH: I offer this in evidence.

Whereupon Exhibit 168 was received in evidence, as follows, to-wit:

Exhibit 168 Deft.

Missoula, Montana, May 6, 1915.

Northwestern Trustee Co.,

Sidebotham & Wilmot, Fiscal Agents,

Great Falls, Montana.

Gentlemen:

Owing to an unexpected contingency which makes it necessary for me to raise money immediately, I should appreciate it if you cancel my stock certificate and return the \$300.00 paid in on the same.

Prompt action would be a very great accommodation.

Very truly yours,

J. A. URBANOWICZ.

— — —

Re-Direct Examination.

By MR. WHEELER: One of my reasons was that I required a certain amount of money at that time, another I didn't have quite the faith in the company that I had when I first negotiated with Mr. Sidebotham.

Re-Cross-Examination.

By JUDGE SMITH: I had a reason for not including that second reason in the letter. I thought that if I had included that reason that Sidebotham and Wilmot possibly wouldn't consider returning the money. Why, certainly, I was trying to get my money back.

Witness excused.

(Here insert Exhibit 160, Plaintiff.)

— — —

Whereupon Edwin Donnelly, a witness called and sworn on behalf of the Government, testified as follows:

## Direct Examination.

By MR. WHEELER: My name is Edwin J. Donnelly. I reside at Philipsburg. I am an engineer, at the Grainirte Mine now. I am acquainted with Mr. Sidebotham. First became acquainted with him in the fall of 1914, at Maxwell, Montana. My occupation at that time was looking after the business of the Royal Basin Mining Company, at the railroad. I had occasion to buy stock of the Northwestern Trustee Company. All I remember is that it was stock of the Northwestern Trustee Company. Mr. Sidebotham told me it was a dividend-paying stock, paying eight per cent annually, and if my memory serves me correctly, he said that the dividends would be paid semi-annually. He said they were doing a general banking business, specializing on farm loan mortgages, he said, at Great Falls. I bought ten shares; supposed to have paid twenty dollars a share. Mr. Sidebotham said that the money was to be utilized for loaning money on farm mortgages, by the company, as I understood him. I paid for it in notes. Those notes were never paid. I believe I met him once after that while he was over there. I don't believe that I talked business to him. I was given a copy of the complaint by the sheriff of Granite County, for collecting my notes; it was sent by Nordskof, supposed to be an attorney for the Northwestern Company.

Suit was never entered that I know of. My sub-

scription was cancelled, the following spring, I believe.

Plaintiff's Exhibit 169 I have seen before. I got this through the United States post office. I received it at Maxwell.

MR. WHEELER: We now offer in evidence Plaintiff's Exhibit 169.

JUDGE SMITH: We object to it, as incompetent, irrelevant and immaterial, not tending to prove any issue in the case.

THE COURT: What is the materiality of this?

MR. WHEELER: It goes generally, may your Honor please, to show fraud and misrepresentation.

THE COURT: What is there in that that is going to show that that is misrepresentation?

MR. WHEELER: The statement that the stock has increased in value a hundred dollars, or ten dollars a share, since the time he purchased it.

THE COURT: Objection overruled.

Exception noted.

Plaintiff's Exhibit No. 169 is as follows, to-wit:

PLAINTIFF'S EXHIBIT NO. 169.

NORTHWESTERN TRUSTEE COMPANY  
LETTERHEAD.

February 2, 1915.

Mr. E. J. Donnelly,  
Maxville, Montana.

Dear Sir:

Your wire which is as follows received: "Return note by February third or prosecuting attorney Granite County will take charge of matter." We

cannot understand the wire or what you mean by asking us to send you your notes without your sending us a check to cover same. No notes have ever been returned to subscribers unless full payment of same has been received. This telegram is a mystery to us, we must admit.

The only conclusion this office can come to is that you have heard of the operations of one C. F. Carrere, representing the Farmers and Drovers Company of Salt Lake City. It seems that Carrere sold stock and took notes without properly remitting same to the home office where he was supposed to have been employed, and on account of this has caused considerable confusion in your section. We are, indeed, sorry that this has happened, as it has had a tendency to cause some people in your section to become alarmed over this Company. This is one of the largest and soundest institutions of its kind in the State of Montana, and has as its officers and directors, men who are well-known in the financial and business affairs of this State. These men court investigation of any kind. This office is very much surprised that it has to go to Granite County to learn of its own affairs. We feel that it is, indeed, a lack of knowledge on your part concerning the Company that makes you send such a telegram, as your investment has increased \$10 per share, or \$100, since the time you purchased.

If you are dissatisfied with the investment and you will take the matter up with our fiscal agent's department, we know of no reason at this time why



that should not be able to sell your stock and return to you a profit. There has been about 100 new stockholders added since the time you subscribed, who subscribed at \$30 per share. We wish to call you attention to the fact that about 95 per cent of the principal business men of Great Falls are stockholders in this institution. We are enclosing for your information a clipping from the Great Falls Daily Tribune. If you for one minute think that this is a blue-sky or illegitimate Company, the sooner you get the facts from this office, the wiser you will be as to what you have bought. Our Directors are convinced that they are handling the money of the stockholders in a most conservative manner, investing it in first mortgages only at 40% of the value of the property mortgaged.

As above stated, if you are still dissatisfied with your investment, we suggest that you get in communication with Sidebotham & Wilmot, Sole Fiscal Agents of the Company, with reference to the resale of the stock.

We are anxious to have an explanation also of your wire.

Hoping that this will give you a better understanding of the situation as it exists, we are,

Very truly yours,

NORTHWESTERN TRUSTEE COMPANY.,

M. A. CORT,

Asst. Sec. & Treas.

My subscription was canceled after this letter, Plaintiff's Exhibit 169, was written.

Cross-Examination.

By JUDGE SMITH: I was threatened with a suit on my notes. That is the fact. My other explanation may have been made inadvertently. That is the fact. The notes were returned to me, canceled, stating that they had sold the stock to some other gentleman for \$30.00 a share.

Re-Direct Examination.

By MR. WHEELER: Mr. Sidebotham stated that.

Witness excused.

— — — —

Whereupon C. D. Kicher, a witness called and sworn on behalf of the Government, testified as follows:

Direct Examination.

By MR. WHEELER: My name is C. D. Kicher. I am an investment broker, residing at Minneapolis, Minnesota. I am acquainted with Mr. Sidebotham and Wilmot. Became acquainted with them about 1913, I believe. I was living at that time at Shelby, Montana. At that time I was cashier in the State Bank. First got acquainted with Sidebotham and Wilmot at Shelby. I did have occasion to subscribe for stock of the Northwestern Trustee Company, for five hundred dollars, I believe.

Plaintiff's Exhibit 170 is a subscription of stock, and a note for five hundred dollars. They bear my own signature, and that of Kicher and Evans, by myself. Exhibits 170 and 171 bear my own signature, and that of Kicher and Evans, by myself. As

stated on the subscription blank, we were supposed to have forty thousand dollars loaned within that vicinity. Mr. Sidebotham stated that to me, I believe. I think the man's name who was present was Miller. This forty thousand dollars that was to be deposited in the bank was to be loaned on farm loans in that vicinity. I don't believe I did ever make a request that this money was to be placed in the bank subsequent to that time. I am not sure if I ever took it up with them at all; it is a long time ago; my memory fails me on that score.

MR. WHEELER: I offer Plaintiff's Exhibit 170 in evidence.

JUDGE SMITH: We renew, if the Court please, our same general objection to this exhibit.

THE COURT: The objection will be overruled. Exception noted.

Plaintiff's Exhibit 170 is in words and figures as follows, to-wit:

(Here insert Plaintiff's Exhibit 170.)

— — —

Whereupon Exhibit 171 was received in evidence, and is in words and figures as follows, to-wit:

Exhibit 171 Plff.

\$500.00/100

Shelby, Mont., Feb. 13, 1914.

Three hundred Sixty-five days after date for value received I promise to pay to myself or order Five Hundred ollars Negotiable and payable at the office from which notice is sent, with interest at the rate of eight per cent per annum from date until

paid, interest payable semi-annually together with reasonable attorney's fee in case suit is instituted on this note or any part of it, is collected by an attorney. The makers, endorsers and guarantors severally waive presentment for payment, notice of non-payment, protest, and notice of protest on this note.

Due Feb. 15, 1915.

Kicher & Evans.

Address Shelby, Mont.

Chas. D. Kicher.

No. 5212

This note based upon \$40,000 being loaned in the Shelby County within one year from date.

Write across face of page) "Cancelled Jul 31, 1915."

— — —

No money was ever loaned in that district that I know of. I couldn't say. I couldn't say when my notes were canceled. I did not know that they were cancelled. No demand was ever made upon me to pay the same.

#### Cross-Examination.

By JUDGE SMITH: I live now in Minneapolis, Minnesota. That forty thousand dollar proposition at the bottom of it I considered a condition precedent to the paying of any money on my subscriptions. I never demanded that any loan should be made in our vicinity that I remember of. I don't think the bank failed a little while after that. It never did. It went into the hands of the bank examiner. I was acting for myself. Why, certainly, I did have a personal interest in this condition be-

ing kept. We wanted a certain amount of money loaned in the vicinity; we got a certain per cent on the money loaned. We would, Kicher and Evans, as stated on that note. Our business was loaning money. I couldn't remember reading that; it is two years ago, it is a long time ago. I don't think I ever did make an application for a loan. I couldn't say positively that I did or not. I have not ever been connected with that bank since it went into the hands of a receiver.

No, I cannot remember that I ever received that Exhibit 172, Defendants.'

JUDGE SMITH: I desire to identify this letter.

Whereupon paper was marked Defendants' Exhibit 173, as paper shown witness.

Witness excused.

— — —

Whereupon John W. Jansen, a witness called and sworn on behalf of the Government, testified as follows:

Direct Examination.

By MR. WHEELER: My name is John W. Jansen. I am postmaster at Coalwood, Montana. I have resided there seven years. My business or occupation prior to the time I was postmaster was dry farming. I am not acquainted with the defendants, or any of them, in this case.

Q. When was it that you purchased the stock?

JUDGE SMITH: I object to that, as incompetent, irrelevant and immaterial.



THE COURT: What is the object of this?

MR. WHEELER: Some correspondence that follows this up, from Mr. Wilmot, charged in the indictment.

THE COURT: Very well. Objection overruled. Exception noted.

May 8, 1915, I purchased five shares of stock, at thirty dollars per share. I paid for it, for five shares.

Q. What, if any, representations were made by Mr. Clawson to you, with reference to the stock of the company?

JUDGE SMITH: Objected to, as incompetent, irrelevant and immaterial, for the defendants whom I represent, not tending to prove any issue in the case.

THE COURT: Objection overruled.

Exception noted.

He guaranteed that the stock would net me eight per cent annually.

Q. And what, if any, other inducements or representations were made?

MR. KELLY: We object to this, as incompetent, irrelevant and immaterial, and not tending to prove or disprove any issue in this case, as far as the defendants on trial are concerned.

JUDGE SMITH: I desire to offer my objection that there is no proof here that Clawson represented any of the defendants in this case or the Northwestern Trustee Company.

THE COURT: That is true, but they cannot

prove everything all at once. On the promise of the District Attorney that it will be fulfilled, the testimony is admissible.

Objection will be overruled.

Exception noted.

A. Clawson stated that they were putting in a loan board and that I would become a member of that board, a loan board of three members. I never did become a member of that loan board. They produced a circular setting forth who was at the head of this, A. M. Alderson, Mr. Rae, William Rae, I believe, also Governor Stewart, Ex-Governor Norris. It was represented to be one of the strongest concerns in the Northwest.

Exhibits 174 and 175 I have seen before. First saw them at my post office at Coalwood. I was postmaster at the time.

MR. WHEELER: We now offer in evidence Plaintiff's Exhibits, numbers 174 and 175. This is an indictment letter, your Honor, eleventh count.

JUDGE SMITH: Same general objections, if your Honor please.

THE COURT: Objection will be overruled.

Exception noted.

Plaintiff's Exhibit 174 was received in evidence, read to the jury, and is in words and figures as follows, to-wit:

(Here insert Plaintiff's Exhibit 174 and 175.)

EX. 174 PLFF. (Envelope)

Sidebotham & Wilmot, Fiscal Agents

Northwestern Trustee Company

General Offices Great Falls, Montana

(Cancelled 2c stamp)

Postmarked "GREAT FALLS Jun 29-15, 7 - PM  
MONT."

MR. JOHN W. JANSSEN.

Coalwood, Montana.

PLAINTIFF'S EXHIBIT NO. 175.

NORTHWESTERN TRUSTEE COMPANY  
LETTERHEAD.

June 29, 1915.

Mr. John W. Janssen,  
Coalwood, Montana.

Dear Sir:

Your valued favor of the 11th inst. received and before replying to same, I have taken the matter up with our Mr. Clausen relative to the statement you make that he has sold your notes. I am informed such is not the case, as he has not parted with them, nor has the Company, although this is entirely regular and permissible. The Company is anxious to cash all its notes as early as possible, so as to place the money in mortgages on lands throuhout the state, as we have more demands for loans than we can supply.

I fail to understand why you wish your notes returned, as the stock is being bought by the very best people throughout the State, 126 of them residing in Great Falls, where the home office is located. This should speak to you very strongly in itself. It is to be expected that when a man signs a contract and notes, whether it be for stock or anything else,

he knows what he is doing, and if he afterward states that he has changed his mind, does not in any way relieve him of the responsibility incurred.

You are associating yourself with something like 800 other good Montana people to build a large Mortgage Loan Institution, one that we are all proud of, and one that we expect will be one of the best and largest financial institutions in the West. You understand a Mortgage Loan Company takes no chances on its investments, dealing exclusively in first mortgage loans on land and property never exceeding 50% of a conservative value of the property.

When such men as Ex-U. S. Senator Paris Gibson and Ex-Governor E. L. Norris and hundreds of other high grade men are stockholders in an institution, it is a very safe thing for you or anyone else to have as large an investment in as you can conveniently handle.

We do not return notes or contracts to anyone under any condition and we make no exception in your case.

You have used good judgment in selecting this Company for an investment, and I advise you to go through with your payments you have contracted for, as I believe you will be greatly pleased by your forethought in the near future.

Thanking you for writing us and assuring you we will be pleased to keep you fully advised as to

the progress of the Company, I am,

Yours very truly,

J. G. G. WILMOT,

Chairman Executive Committee.

NORTHWESTERN TRUSTEE COMPANY.

J. G. G. W./J. H.

I have examined Plaintiff's Exhibit 176. I have seen a circular like that before, at my home in Coalwood. Mr. Clawson handed it to me.

MR. WHEELER: We now offer in evidence Plaintiff's Exhibit 176.

It is the identical thing with the pamphlet that was handed to me.

MR. GALEN: Object to it, as not having been sufficiently identified by the witness.

THE COURT: Oh, I think so.

MR. KELLY: There is no proof that it was issued by the Northwestern Trustee Company or by its officers.

MR. WHEELER: It will be identified later.

THE COURT: If there is any failure of proof, it can be taken up later.

JUDGE SMITH: We understand that this comes under our general objection.

THE COURT: Yes. Objection overruled.

JUDGE SMITH: Note our exception.

Cross-Examination.

By MR. KELLY: It is one of the same circulars or pamphlets that Mr. Clawson handed me. It is not the circular which I received. I have brought that with me. I read over the names, which I did



when it was presented to me.

MR. KELLY: We renew our objections.

THE COURT: Any others like this you propose to insert?

MR. WHEELER: We can produce other proof that this one was issued by the Northwestern Trustee Company.

Q. (By THE COURT): Did you examine it when it was given to you?

A. I did.

Q. Look through it. Answer fully. Have you looked through this one?

A. Yes, sir.

Q. (By MR. WHEELER): Have you seen it before now, on the witness-stand?

That is identical with the one that was handed me by Mr. Clawson.

THE COURT: Objection overruled.

Exception noted.

Whereupon Plaintiff's Exhibit number 176 was received in evidence, read to the jury, and is in words and figures as follows, to-wit:

(Here insert Exhibit 176.)

JUDGE SMITH: If your Honor please, it is especially essential that Clawson's authority should be shown before this bulletin is read to the Court. My information is that it was never circulated by any of these defendants of the Northwestern Trustee Company. It was printed, and .....

THE COURT: If they printed it, that is enough. It does not matter if they put it in their pocket or

not. The objection will be overruled.

JUDGE SMITH: If it was put in there, and it was withdrawn. Exception noted.

Cross-Examination.

By JUDGE SMITH: The list of names and pictures that appear upon it enables me to identify it. Here is the list of names. That is one thing that fixes it in my mind, yes, sir. I recall the picture of R. R. Sidebotham. I never saw R. R. Sidebotham before. I see him in this Court. I think I had one, Exhibit 90, since, in my possession. Clawson and his associate, who was Hanson, I believe, by name, showed it to me. I did not know Mr. Hanson personally. He doesn't live in our vicinity. I did not know Clawson. He does not live in our vicinity. I do not know where he is now. Never saw him since that day. He left this Exhibit 176 on May 8, 1915. My wife was present. She is not a witness here. I filed it away for future reference after they left. I kept it until I mailed it to Mr. Paisley. I got one of these circular letters of inquiry from Paisley, of Spokane, and filled it in, and sent it back. I have paid one hundred dollars for my stock. I subscribed for one hundred and fifty dollars. I still owe fifty dollars. I made a complaint that my notes were being sold. Well, I couldn't say that I did with this one, Exhibit 90. I couldn't say whether it was filed with the other one or not, or whether I had it in my possession any length of time or not. I destroyed a few papers in relation to this matter, thinking they were of no im-

portance. It is possible I destroyed a copy of this Exhibit 90. It is not in my possession now. I sent this other exhibit, with the picture on the outside of it, to Mr. Paisley. Clawson talked to me about mortgages, first mortgages on farm land. I understood that by becoming a stockholder, I automatically became a member of the local board of appraisers. The board of appraisers, I believe, is what they called it. Clawson said they were putting in a loan board of three members, and that I was to become a member; and I never did become a member. It is a fact that, from the literature I received, and from what Clawson said to me, I understood that I would be automatically a member of the loan board, by virtue of subscribing to the stock, and that I am now, if I had any occasion to loan any money up in that vicinity, a member of that loan board, because I am a stockholder. I never received my stock certificates; so from that I presumed that I was not entitled to sit on any loan board.

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Whereupon H. C. Walker, a witness called and sworn on behalf of the Government, testified as follows:

Direct Examination.

By MR. WHEELER: My name is H. C. Walker. I have been in business at Poplar, Montana, since 1888. Am acquainted with C. W. Tobin. Became acquainted with him three or four years ago, when I bought my Northwestern Trustee stock from

him. I paid him twenty dollars, for fifteen shares. I was told I was going to be wealthy. Nothing that I really remember now was said with reference to dividends. Mr. Tobin sold me that stock. He told me he thought it would pay me all the way from 10 to 15 per cent. I couldn't say exactly what time he said it would pay that. No dividend date was fixed. I bought my stock, and at that time I was the Senator from Sheridan County. He told me if I didn't like the stock, he would re-sell it for me. I still have it. I afterwards made a request of him to re-sell it. I couldn't say the day. I think Mr. Paisley has the letter that Mr. R. E. Patch and Mr. S. E. Carlos and Frank Kitcher, stockholders of The Traders' Bank, perhaps, they might take my stock. I don't think it was ever broached to me at all in regard to the financial condition. Nothing was said to me with reference to the soundness of the company. Mr. Tobin told me if I wanted to buy some stock, and I told him yes, and I bought it. He told me he thought it would pay me a good dividend, all the way from ten to fifteen per cent.

Plaintiff's Exhibits 177 and 178, I might have had that letter. I don't remember it. I may have seen it before. I know I got a letter from Great Falls. I think his name is Wellington Meigs. He is a lawyer in Great Falls. He brought suit against me on four notes. I got that letter at Poplar, through the mail.

MR. WHEELER: We now offer in evidence Plaintiff's Exhibits, numbers 177 and 178.

JUDGE SMITH: Object to it, as incompetent, irrelevant and immaterial, and not tending to prove any issue in this case, and not having been properly identified. For the further reason that it has not been proven that the man who sold the stock to Senator Walker had any authority from the company, or any of its officers, or any of the defendants in this action.

MR. WHEELER: We expect to follow them up and have the mididentified. All these will be identified later.

THE COURT: Objections overruled.

Exception noted.

Whereupon Plaintiff's Exhibit 177 was received in evidence, read to the jury, and is in words and figures as follows, to-wit:

EX. 177 PLFF. (Envelope)

Northwestern Trustee Company

General Offices Great Falls, Montana

Postmarked "GREAT FALLS, DEC 18 - 14

7 - PM MONT."

Postmarked "Great Falls Dec. 18 9 PM MONT."

MR. H. C. WALKER,

Poplar, Montana.

Whereupon Plaintiff's Exhibit 178 was received in evidence, read to the jury, as follows, to-wit:

— — — —

PLAINTIFF'S EXHIBIT N. 178.

NORTHWESTERN TRUSTEE COMPANY

LETTERHEAD.



Dec. 18, 1914.

H. C. Walker,  
Poplar, Mont.

Dear Sir:

This office is at a loss to know why you have not paid your promissory note and lived up to your signed contract and subscription. You are possibly aware of the fact that the stock of this Company is selling rapidly at \$30.00 per share, which is \$10.00 more per share than you paid for your stock, and that the institution is on a solid financial basis. Our funds are being invested in farm mortgages.

We are organizing loan boards in each county. These loan boards appraise the loans in their respective localities in accordance with the policy of the institution, which is not to accept loans until they have been first approved by the stockholders in that vicinity and appraised again by the Company's appraiser from Great Falls. We are building up a solid organization and we are securing the best of the old-time sheep and cattle men of Montana, and we are drawing into our business a class of clients to do business with in the future whose patronage many institutions have spent years in trying to secure.

The Company is extending its field of operations into adjoining states and now have approximately 700 stockholders and subscribers. Considerably over 100 new subscribers have been added in the last few weeks from Powell and Deer Lodge counties.

We feel that the only reason you are not paying

is on account of a lack of knowldge on your part of the actual conditions which exist in the Company. If there is any reason why you have not met your obligation, we will appreciate your writing us. We have been more than lenient with you and have not desired to bring about forfeiture, as provided for in your subscription and cause you to lose every dollar you have put in, but unless this matter is immediately taken care of it will be necessary for us to bring suit or forfeit your stock.

Yours very truly,

NORTHWESTERN TRUSTEE CO.

By M. A. CORT,

Asst. Sec. & Treas.

Whereupon J. P. Lieb, a witness called and sworn on behalf of the Government, testified as follows:

Direct Examination.

By MR. WHEELER: My name is J. P. Lieb. I reside at Pony, Madison County, Montana. My business is farming and stock-raising. I have lived in Madison County about 18 years. I have had dealings with the Northwestern Trustee Company. I purchased stock in that company. I bought ten shares of stock, and paid thirty dollars a share for it; bought it of a man by the name of Wills. I couldn't say just exactly what representations were made. He told me that it was on a dividend paying basis. I wouldn't try to say what dividends it was paying. He had a newspaper clipping, I took it to be. I didn't see them, any more than him just read-

ing them off, about different banks, and that he said the returns were on the investment, you know. He said that he didn't see why this should not be a paying investment, as any of the other banks, and that you couldn't buy stock in any of the old established banks. I paid \$150.00 for my stock, cash; gave him a check for \$150.00, and gave a note; amounting to \$300.00 in all. He didn't say as to what was to become of the money that I paid to him. The check for \$150.00 I made to Sidebotham and Wilmot. I don't recollect as to the note. I think it was the same. He didn't tell me as to what, if anything, was to be done with the money. There is a letter, though, that explains it to me, the first I knew of it.

Plaintiff's Exhibits 179 and 180 I have seen before. I got it down at the United States post office, at Pony. I received the letter enclosed in the envelope, yes, sir.

MR. WHEELER: We offer in evidence Plaintiff's Exhibits 179 and 180.

JUDGE SMITH: I interpose the same general objection.

THE COURT: The objection will be overruled.

Whereupon Plaintiff's Exhibit 179 was received in evidence, was read to the jury, and is in words and figures as follows, to-wit:

Plaintiff's Exhibit 179.

Envelope with two-cent stamp, canceled, post-marked Great Falls, Mont., Jun. 18-15, 7-PM, from Northwestern Trustee Company, General Offices,

Great Falls, Montana, addressed to Mr. J. P. Lieb,  
Pony, Montana.

Whereupon Plaintiff's Exhibit 180 was received in evidence, read to the jury, and is in words and figures as follows, to-wit:

Plaintiff's Exhibit 180.

Northwestern Trustee Company  
(Incorporated) (Letter-head.)

Great Falls, Montana, Jun. 15, 1915.

Mr. J. P. Leib,  
Pony, Montana.

Dear Sir:

On account of the large demand for loans and the many applications on file in this office from our stockholders and others who have a high grade of security to offer, our Board of Directors have authorized a discount of 2% on all notes held by the Comnap. Thinking that you might wish to take advantage of this discount, we are writing you this letter before taking the matter up with the banks. We believe that if these notes are paid and the money loaned out on first mortgages, it would earn us much more than just the interest that is accruing on the notes.

Our Company is progressing rapidly and has moved into its new Banking Rooms in the Ford Building which were especially planned and fitted up for our work. You are cordially invited to visit us and become familiar with the business we are doing.

Thanking you for an early response as to whether

or not you wish to take up your notes at this time,  
we are,

Very truly yours,

Wm. C. Rae,

Sec. & Treas.

The discount allowed on your  
notes would amount to \$7.50  
besides stopping interest.

— — —

Whereupon Arthur J. Soule, called and sworn as  
a witness on behalf of the Government, testified as  
follows:

Direct Examinaiton.

By MR. WHEELER:

My name is Arthur J. Soule. Thompson Falls is  
my post office, and I live twelve miles below  
Thompson Falls. I had dealings with the North-  
western Trustee Company; I think, in April, 1914.  
I know Mr. Sidebotham. There was a good deal of  
talk. I subscribed for five shares of the stock at  
that time, and paid \$30 a share. I had this conver-  
sation at my home. I don't know the man's name.  
I just don't recollect it; but he was a small, sandy-  
complexioned man. One would talk awhile, and then  
the other, they took turns at it. Well, the stock was  
highly recommended to me. In fact, they wanted  
me for one of their appraisers in that part of the  
country; and I didn't feel incline to buy the stock,  
but by the big inducements they offered to me as a  
dividend payer, why I took five shares on that con-  
dition. They said it would pay from forty to sixty



per cent each year. These dividends were to be paid the first of the year. I was impressed with the fact that our State officers were interested in the company, and I was also shown a letter from Senator Donlan, recommending it as a good thing, which induced me to buy it. Ex-Governor Norris was mentioned, and Senator Donlan, and I can't just recall any more just at present; but there were others mentioned. The Secretary of State and the State Treasurer were mentioned. Mr. Rae and Mr. Alderson. I couldn't recall the conversation in regard to what was said about his being interested in the company at that time, but there was some talk about Mr. Rae. I afterwards received some correspondence. Well, in the fall I had to borrow some money, and the stock was added to that loan that I borrowed. I did not have any conversation with Sidebotham and Wilmot or Sidebotham and this other gentleman after that time. Nothing more than the correspondence. In reference to being appointed on the loan board, I asked him like this, I says, "Do you expect me to go around and appraise people's ranches for what they are worth and do it for nothing?" and the answer was this: "If you get from forty to sixty per cent dividends, you are well paid for that; aint you well paid?" That was the explanation in regard to that. I never had any occasion to make appraisements on the loan board. I don't know of any loans ever made in our district, except the one that I got. I got a loan from them. Well, the loan was in this way: I got

\$1,388, but my stock cost me \$150; that was added to it; and the loan was to be a six per cent loan. There was two per cent taken out of that loan in advance; I suppose it would be an advance interest. That was added to the loan, too, and that made the loan \$1,650.00. I actually got in cash \$1,350.00. I don't know who appraised my property. I do not know whether anybody appraised it. There was a blank sent to me to fill in; perhaps my statement on this property was taken as sufficient.

I never received a dividend on this stock.

Cross-Examination.

By JUDGE SMITH:

I know Mr. W. A. Barto, of Thompson. He did not appraise my land, to my knowledge. He is the banker in Thompson Falls. I know Mr. Lutz. He is a dairy man at Thompson Falls. I got the loan. What a man don't know he can't tell about. If it was appraised, I don't know it. I gave a mortgage. Well, the notes were attached. Now, I guess there was a note with the mortgage.

I am a married man, and my wife signed it. Both of us signed before a notary public; I don't know, if Mr. Barto is a notary public, we did. I signed it before Mr. Barto, this man whom you gave me the name of. I knew what I was doing. I haven't any reason to believe that my wife didn't know she was doing. The original amount of the loan was to be fifteen hundred dollars, and two per cent was taken off, for five years, or \$150.00; added to the loan. There was some stock came in there some

place. Then the stock coming out of the \$1,500.00 left \$1,350.00. No, I think it figured out \$1,388.50. I think that is correct. I understood it all except this two per cent off. I understood it was a straight six-per cent loan that they were making. I didn't understand that they were loaning their money at eight per cent; no, sir, not on farm loans. Well, that was the condition; eight per cent was as low as I could get it any place else. Having that eight per cent in mind, that two per cent was as good as I could get any place else. I consented that the per cent for five years should be added to it, and that thereafter the loan, instead of being eight per cent, should bear but six per cent. I consented to that when the mortgage was drawn up.

They showed me literature, papers, pamphlets, and circulars, and that sort of thing. I did read them somewhat. I think there were some papers left there. They talked to me about what the dividends, what returns from money was made by several of the big banking institutions of the country. They cited me these cases and of other corporations that were in the mortgage loan business. They named some of the names of each corporation to me. Those names are not familiar to me. I couldn't recall any of them that they named. I don't recall whether there were any such companies in existence as them.

I signed a contract for stock. This was in it, "No agent or person whomsoever has authority to vary the terms of this contract, or has power to bind

the Northwestern Trustee Company, or Sidebotham & Wilmot, by any statements or agreements other than herein set forth.”

Q. These representations in relation to forty, and sixty per cent on the money invested, I understood you to say that they said that they—that if the company was successful that they believed it would be able to pay that amount of dividends, or something in substance like that. They didn’t tell you that the company was paying forty or fifty per cent at that time?

A. No, sir, the dividends were to be paid the first of the year, but after they had handed me that slip, I noticed on the slip that the par value of the stock was \$10.00, and I had paid \$30.00 for it. I asked an explanation of that, and the explanation was that it was to create a surplus to pay this dividend the first of the year. That is what the extra \$20.00 a share was for, as I understood it. And so understanding, I signed the contract. I had signed the contract before that, and of course I accepted it after that. At that time I didn’t have any idea of repudiating it, when I learned that, but it was not more than twenty minutes afterwards when I realized what I had done.

— — —

Whereupon G. F. Thompson, a witness called and sworn on behalf of the Government, testified as follows:



## Direct Examination.

By MR. WHEELER:

My name is G. F. Thompson. I reside at Malta, Montana. I have resided there about seven years. Have been engaged in the lumber business all of that time. I did have occasion to have business dealings with the Northwestern Trustee Company. I don't remember, I think it was in the fall of 1913. Mr. Tobin was the first that spoke to me about the Northwestern Trustee Company. I subscribed for ten shares, I think it was, and paid for it two thousand dollars. That is a copy of my subscription. I thought it was ten shares. It may be wrong about that. Twenty dollars was the price I was to pay a share. Well, that would be a hundred shares. A hundred shares. I will take that back. No one was present with Mr. Tobin at the time I subscribed for this stock. At the time I purchased the stock it was represented to me that the company would have earnings; I don't remember just the stated amount, but it would make profits each year.

As to representations regarding the amount of stock and who was purchasing the stock, they were selling the stock to do a building and loan business, and farm loan business, and they were to put up buildings in the larger cities, as I remember now, and do a banking business as far as they were able. As I remember now, they were to do a banking business. They were to establish agencies at different towns, defined territories; and on condition that I take two thousand dollars' worth of stock, I was to



be a loaning agent at Malta, and also represent them in the building and loan business, to get a certain amount of the loan business. Something was said with reference to construction of buildings in Malta. I was to get a commission for making any loans, of two per cent on whatever loans were made. I think his statements were, the State officials, or some of the State officials, Mr. Alderson, and Rae, and former Governor Norris, were interested in the company. He mentioned the different stockholders in Great Falls whom I happened to know.

MR. WHEELER: We now offer in evidence Plaintiff's Exhibit 183.

JUDGE SMITH: I object to it, on the part of Wilmot and Sidebotham, on the ground that it appears to be a mere private memorandum; it is not shown that any of the defendants in this case, save the defendant Tobin, or the Northwestern Trustee Company, had anything to do with it, and it is not apparently a subscription at all, it is a receipt for something.

MR. WHEELER: We can follow it up by showing afterwards that it was recognized by the company officials and letters.

Q. I will ask you to examine the back part of Exhibit 183, and state who put that writing on there?

A. Mr. Tobin.

THE COURT: The objection will be overruled.

DEFENDANT TOBIN: I make the same objection.

THE COURT: Objection overruled.

Exception noted.

Whereupon Plaintiff's Exhibit 184 was received in evidence, and is in words and figures as follows, to-wit:

(Here insert Ex. 184.)

Exhibit 183 I have seen before, in Malta. It came in the United States mail. I don't remember what time it was that I received that. It was after I signed my subscription. This came the following spring, if I remember right. If my stock subscription was given in 1913, which I think it was—the records will show—, it came in the spring of 1914.

MR. WHEELER: We now offer in evidence Plaintiff's Exhibit.

JUDGE SMITH: We make the same general objection.

THE COURT: Very well. Subject, of course, to sufficient connection, and of its having emanated from the company.

MR. WHEELER: That will be shown.

I had a conversation with Mr. Sidebotham. If my stock subscription was given in 1913, that would be in the winter of 1914. It was in the winter of 1914, at Malta. Well, he talked in a general way as to its advancing rapidly, and that they would soon be in a position to make loans, possibly within ninety days, and that in the spring they would be in a position to furnish money in the building of homes, they would be in such a position to show big profits, or words to that effect. There was something said by him with reference to building houses in Malta.

He told a citizen of Malta in the office that he could have money to build a home in the spring if he wanted it, and that the deal would be handled through our office. No money was ever loaned subsequent to that time, to my knowledge. I made a suggestion to them that they loan money in Malta, or around in that community, but there was never anything done.

Plaintiff's Exhibit No. 185 I have seen before. I got it through the mail at Malta.

MR. WHEELER: We now offer in evidence Plaintiff's Exhibit 185.

Plaintiff's Exhibit 186 I have ~~been~~ seen before, at Malta. I received it through the United States mail.

JUDGE SMITH: This exhibit 185 purports to be a personal letter. There are some state-ments by Mr. Tobin. It does not seem to me that there is any showing that they have been authorized by the company, that it is one that has been authorized by the company, and I object to it, as incompetent, irrelevant and immaterial. The other one I didn't see yet.

THE COURT: It may be competent in reference to the defendant Tobin, whether or not it is or not as to the others, depends upon the complexion the case takes when it is finished. At this time the objections are overruled.

JUDGE SMITH: I would like the record to show that my objection shows also as to the other Exhibits, 185 and 186.

THE COURT: Objections overruled.

Whereupon the defendants then and there duly excepted to the ruling of the Court.

Whereupon Plaintiff's Exhibit 185 was received in evidence, and is in words and figures as follows, to-wit:

PLAINTIFF'S EXHIBIT NO 185.

Feb. 18, 1915.

Mr. G. F. Thompson,  
Malta, Mont.

Dear Sirs:

Your letter of the 18th, has been received. I doubt very much if I could help you in this affair, however, willing I might be. I feel that it is simply a case of collecting your notes, and based upon similar cases notably the cases of the Montana Life, State Life, Rocky Mountain Fire, the N. W. T. Co. will get judgment against you. I have no letters or mems of any sort dealing with your case, as all such papers have been burned by me some time ago. I feel however a willingness to help you, partly for the reason that I was instrumental in getting you interested, and toward that end would make the following suggestions, this suggestion must be treated as confidential by you however. My plan is this. You go ahead and protect your interest in the stock originally subscribed for. Viz: one hundred shares. You should be able to do this to their satisfaction. I am around the country a great deal and expect to carry a line through this part of the state. I believe that a little later I can sell one half of your



stock, or at least sell one thousand dollars of it. The stock I understand is now selling for thirty (\$30.00) Dollars per share. I will sell half of yours for the best I can get, and give you one thousand dollars keeping the difference for my trouble. This will let you down a little on your original investment. I have just been asked to take on another allotment of this stock, and may do it, in this way handling yours would be an easy matter. I know I can do this, and will do it for you if you are willing. I don't know what you have paid as a total on this stock, but feel whatever it is that the amount plus the cost of a suit will be a total loss to you. This other way you will save at least one thousand dollars of your original liability.

I feel that the N. W. T. Co., will make good. The men in charge now are determined if it is humanly possible to make a success of the Co., and the chief difficulty they are encountering at present is the one they are having with you. Viz: Collections. It reminds me of a story. Among the jewish people it was a custom whenever a wedding was pulled off for all the invited guests to bring a jug of native home made wine. This wine was used for the occasion to liven up the very guests who brought it. Each guest as he came poured his gift of about a gallon into a larger vessel provided for that purpose, and from this larger receptacle in turn was taken the wine as it was used. Now it happened at this time that there was a wedding and about fifty guests were invited, the year had not been an extra



good or prosperous one for the people and Isidore Hockenheimer said to his wife as they prepared for the occasion, I don't believe we can afford to take some wine this time, for we are not as prosperous this year, and in so great a crowd and so much wine a little water will not be noticed so I will put into my jug, water, and when it is pored into the wine no one will see the difference. The result was rather unexpected though. For when the master of the occasion proceeded to draw wine from the large vessel for the guests, there was found therein nothing but water. In some way each guest had been by the same idea as Isidore with the result that no wine was provided. Now the case with the N. W. T. Co., has been somewhat similar, everyone wanted to get into the thing, and reap the profits and share in the benefits, but didn't want to take any risks. However, this is changing now. I have learned that a great many people who have stood out and refused to pay their subscription notes are either paying now or have paid. This is particularly true of a number of Great Falls people. I also learned the other day that only a short time ago, a very large loan was put through for a party in your district, the application for this loan going direct to the G. Falls office. I felt at the time I heard of it that you should have gotten this loan. Now Thompson, I honestly feel that the one great drawback to the success in this Company, is the lack of co-operation on the part of those already interested, and I believe that with that co-operation the

success of the Company is assured. I also feel that my plan for helping you will be a much more satisfactory experience for all concerned than a suit at law where additional expense and no gain of any kind is the result.

I will be here for a few days, write to me if I have not made this clear, and ask any questions you care to.

Very truly,

C. W. Tobin.

Whereupon Plaintiff's Exhibit No. 186 was received in evidence, read to the jury, and is in words and figures as follows, to-wit:

PLAINTIFF'S EXHIBIT NO 186.

Great Falls, Montana.

February 23, 1915.

Mr. G. F. Thompson,  
Malta, Montana.

Dear Sir:

On the 22nd. inst. in coming from Glasgow, I met your book-keeper on the train and we discussed the matter of your stock subscription in the Northwestern Trustee Company. He asked me to drop off at Malta or notify you when I would be going through there, so you could see me. This I promised to do. For some at least, I will not be able to make a trip in that part of the Country, and consequently am writing you.

There has come to my attention since being in Great Falls some data that has a bearing on your case, and I, herewith, submit that data;

You will find enclosed a list of the names of the people, whose subscription notes were past due, and how these notes were handled and the results. The only Northwestern Trustee Company case that came to court was that of one H. W. AuClaire of Fortine, Montana, and judgements in this case was rendered in favor of the Northwestern Trustee Company. All the other cases herein listed have either been settled out of court upon advice of the defendant's attorney or are pending.

I am also enclosing a copy of the court report on two cases that are identical with cases of the Northwestern Trustee Company that of some man in Highwood named Wm. F. Wood, and the other party by the name of Nulliner. Please note that in the case of Nulliner, this court strikes out evidence as there was a written contract, and holds that no part of the oral statements or agreements are part of the transaction.

I am submitting this information for the sole object of showing you what you are up against. I truly feel that the settlement of the affair out of court, will be a much cheaper proposition for you, and will be more satisfactory to all concerned.

If you care to write to me within the next week, you may do so by addressing me, C/o. New Park Hotel, Great Falls, Montana.

Yours truly,

C. W. Tobin.

CWT:JH

# NOTES PAID BY GIVING ATTORNEY ACCRUED INTEREST.

		Principal	Interest
H. A. Nottingham	Great Falls	\$150.00	\$ 3.75
Warren M. Davis	"	150.00	15.90
J. B. Mullen	"	112.50	13.25
Peter Carkulis	"	112.50	10.50
Frank Coleman	"	100.00	9.65
A. L. Bliss	"	55.00	8.37
Cal. Hubbard	"	75.00	8.75
Louis Newman	"	37.50	4.25
Mrs. Sam Bowden	Lincoln	60.00	1.25
O. D. Waxton	Ada	75.00	5.00
Arthur P. Smyth	St. Ignatius	137.25	19.00
Made E. Berg	Stryker (not paying)	215.00	19.20

# NOTES PAID BY ATTORNEY COLLECTIONS LISTS.

		Principal.	Interest.	Costs.
P. J. Gokey	Browning	\$ 375.00	\$34.40	\$27.60
J. A. Best	Ellison	1020.00	.....	91.50
R. S. Ball	Great Falls	100.00	.....	33.70
S. G. Fruglio	Meaderville	200.00	.....	12.70
Henry Chuvet	Dicon	200.00	.....	12.70
Chas. G. Hall	Whitefish	75.00	.....	9.30
John Mieyr	Great Falls	100.00	13.30	31.40
H. L. Moore	"	50.00	7.00	32.40
Frank Combes				50.00
A. S. Hulden	Great Falls	375.00	15.12	57.00

# RENEWALS BY GREAT FALLS STOCK- HOLDERS.

H. C. Price	Great Falls	\$1018.60	Incluing interest
H. O. Clark	"	500.00	" "
W. J. Patterson	"	150.00	" "

NOTES TAKEN FOR COLLECTION WITH  
COSTS BY FORMER DISTRICT ATTORNEY.

G. F. Thompson	Malta	\$1500.00
J. A. Ebaugh	"	450.00
L. H. Ugland	"	250.00
John W. Moran	Poplar	225.00
H. C. Walker	"	225.00
John Manning	"	500.00
John M. Smith	Scobey	250.00
Gustave Oie	"	250.00

All of those who have paid or have agreed to pay admit paying on the advice of their attorney.

Two have paid by being informed of the costs likely to accrue.

Others have agreed to make satisfactory settlement for fear of costs.

M. A. CORT.

Feb. 6, 1915.

Highwood, Montana.

Wm. F. Wood.

vs.

State Life Ins. Co.

Amount	\$3000.00	Cost—Int.	\$ 327.67
		Court cost	28.98
		Collecting Atty. fee	471.00
		his atty.	250.00
			<hr/>
		Total	\$1077.65



478 *R. R. Sidebotham and J. G. G. Wilmot vs.*

Yellowstone Co.

M. J. Nulliner,

vs.

State Life Ins. Co.

Amount \$3000.00	-	-	Interest	\$ 324.20
			Court cost	13.80
			Collecting Atty. fee	250.00
			His atty.	250.00
				<hr/>
Total				\$ 838.00

Ewing.

NOTE: Court strikes out evidence of M. J. Nulliner that were there is a written contract, no part of the oral statement or agreements are a part of the transaction.

Subsequent to that time I received other letters from officers or directors of the company; I think from Mr. Sidebotham, and I believe from Mr. Rae. I am not certain, there may be some letters from Mr. Alderson?

Q. I will ask you if you received a circular letter signed by Mr. Alderson?

MR. KELLY: To which we object, if the Court please, unless the witness shows himself competent to testify to Mr. Alderson's signature.

THE COURT: Yes. There is no need of asking him unless these letters are to be put in. If they are the same thing over again, the time is coming when they will not be allowed to go in.

MR. WHEELER: I simply want to show that he received circular letters bearing these signatures,

for the purpose of saving time.

THE COURT: If they go in at all, they must go in so that they may be identified. The fact that he says that he received them is not sufficient, if objected to.

Plaintiff's Exhibit 186 I have been seen before, at Malta, from Great Falls, through the U. S. mail.

Cross-Examination.

By JUDGE SMITH:

I am thirty-three years old. I am Secretary of the Thompson Lumber Company, up there at Malta. I don't remember how many applications for loans I did send in to the company. I sent in several, or asked about several loans. I don't know. I think I made more than one genuine application. I think there are some other applications. They may not have been in writing. They may have been to Mr. Sidebotham, while he was in Malta. But at any rate, they refused to loan the money on these applications which I had sent in, either verbally, or this one in writing. And the company now has judgment against me for something over \$1,500.00, up there, up there in our county, for my subscription to this stock. It is for perhaps more than that. I don't know the amount.

Cross Examination.

By Defendant TOBIN:

Why, I think you were in Malta all the time. You must have made several trips to the office to see me. I don't remember about that definitely. It is a fact that during one of the conversations you

had with me previous to the time that I took the subscriptions, I told you that I would like to be appointed a loan agent for the company, and that I would get into communication with some of the officials, and get authorization from them, before you took my subscription. I recall that. And then when the subscription was taken, I received afterwards a communication from the office stating that I had been appointed an agent; yes,, sir. Some of the gentlemen that were on the board of directors at that time were known to me by reputation. I refer to Mr. Dalvey and Mr. Grogan and Mr. Boorman. They were known to me because they were in the lumber business. I knew some of them personally then, and had confidence in those men; and the fact that they were officers of the company influenced me a little to take the subscription; yes, sir.

I believed the statements you made to me regarding the company. I don't remember as to you telling me that the company was in a state of organization, that is, they were completing what you expected finally would be a company to operate in that way. I don't remember that the company was not fully organized at that time. I don't know, if it had not been fully organized, you would not have been selling stock. I am familiar with the methods of incorporation under our laws in Montana; but I am not very familiar with it. I am a stockholder in the company I am with now. I don't necessarily know that the capital stock must be all subscribed

for before operations can begin.

Witness excused.

— — —

Whereupon Jacob Bower, a witness called and sworn on behalf of the Government, testified as follows:

Direct Examination.

By MR. WHEELER:

My name is Jake Bower. I reside five miles from Culbertson, Montana. My business is stockraising and farming. I am acquainted with Mr. Tobin. I bought some stock from him, thirty-five shares, at thirty dollars a share, amounting in all to \$1,050.00. He told me that he was selling stock for the Northwestern Company, he was the agent. Well, they were going to buy mortgages on land, from farmers. They were going to buy farm land, take mortgages on land, loan money on mortgage. He said the company would pay not less than eight per cent, and may be more. The State Treasurer, Mr. Rae, he was an official in the company, also the Secretary of State, Mr. Alderson. I paid for it in checks, to Mr. Tobin. I made the check out personally to Mr. Tobin. I told him to fill out the check, and I would sign it.

Plaintiff's Exhibit 187 I have seen before. That is my check, with my signautre.

MR. WHEELER: We now offer it in evidence.

I afterwards got my stock, about a month or more after I paid for it. He told me that the stock would

be down in about a week.

Q. And did you have a conversation with Mr. Tobin in the meantime?

A. Yes, sir.

Q. What, if anything, was said to you at that time with reference to the Northwestern Trustee Company?

JUDGE SMITH: I object to that, as irrelevant and immaterial. It is after the transaction was closed.

THE COURT: Overruled.

Exception noted.

A. Well, he told me it was a good investment, and everything like that, and he showed me some letters, recommending it. That was the time I purchased the stock. I read two of the letters. They were from two of my neighbors, that I personally knew. If he had other letters, I don't read them.

Plaintiff's Exhibit 188 shows that I subscribed for the stock. That is my signature.

MR. WHEELER: We now offer in evidence Plaintiff's Exhibit 188.

JUDGE SMITH: We renew our general objection.

THE COURT: What is this letter?

MR. WHEELER: That is a subscription, and upon the bottom of it, may the Court please, is handwriting, and we will show whose handwriting it is.

THE COURT: Overruled.

PUDGE SMITH: I desire to make the addi-



tional objection to this, that it bears an endorsement that is evidently foreign to the paper itself, has no connection with it, which is immaterial, irrelevant, and as to which there is no foundation.

THE COURT: Whose handwriting will this be shown to be?

MR. WHEELER: Miss Cort's.

THE COURT: On the promise of the District Attorney it will be shown that it is the Defendant Cort's writing, the objection will be overruled. If the promise is not maintained, a motion to strike out will be entertained later.

Exception noted.

Whereupon Plaintiff's Exhibit No. 187 was received in evidence and read to the jury, and is in words and figures as follows, to-wit:

Plaintiff's Exhibit No. 187.

Culbertson, Mont., Oct. 12, 1914. No.....

State Bank of Culbertson 93-122

Pay to the order of C. W. Tobin, Agent \$1050.00

Ten Hundred Fifty.....Dollars

for .....

Jacob Bauer.

(On face stamped):

State Bank of Culbertson

PAID

Oct. 13, 1914

Culbertson, Montana

(On back endorsed): C. W. Tobin, Agt.

C. W. Tobin.

(On back stamped): Pay to the order of  
Any Bank, Banker or Trust  
Co., All Prior Endorsements  
Guaranteed.

Oct. 13, 1914

Citizens State Bank of Culbertson,  
93-123 Culberston, Mont. 93-123.

— — —

Plaintiff's Exhibit No. 188.

**NORTHWESTERN TRUSTEE COMPANY**

Sidebotham & Wilmot, Fiscal Agents.

Capital	General Offices,
Stock	Great Falls
\$500,000.00	Mont.

**Subscription For Capital Stock.**

Subscription No. 5079. \$1050.00

I, Jacob Bauer do hereby subscribe to Sidebotham & Wilmot, Fiscal Agents for Thirty-five shares of the capital stock of the Northwestern Trustee Company and agree to pay therefor the the sum of Thirty Dollars (\$30.00) per share, payable as follows

..... Cash .....

as evidenced by certain promissory notes. ....

Stock certificates to be delivered when final payment is made and I hereby agree that should I fail to pay said notes when due or to make satisfactory arrangements for the payment of the same, that this subscription shall be void at the option of Sidebotham & Wilmot, and that I shall forfeit to Sidebotham & Wilmot any payments made thereof.

No agent or person whomsoever has authority to

vary the terms of this contract, or has the power to bind the Northwestern Trustee Company or Sidebotham & Wilmot by any statements or agreements other than herein set forth.

Dated at Culbertson, this 12th day of October, 1914.

Agent, C. W. TOBIN.      Signed JACOB BAUER.  
Note in pencil:

M. A. Cort furnished stock on this for C. W. Tobin.

Stamped cornerwise across this note:

NORTHWESTERN TRUSTEE COMPANY.

Plaintiff's Exhibit No. 188.

Paid, Nov. 14, 1914.      By .....

— — — — —

Well, he told me that it was a good investment, and got so many men to subscribe for the stock, and so on. I never received any dividends upon the stock.

Witness excused.

— — — — —

Whereupon H. W. Euclair, a witness called and sworn on behalf of the Government, testified as follows:

Direct Examination.

By MR. WHEELER: My name is H. W. Euclair; am a mill hand; live at the present time at Kalispell. Am acquainted with Mr. C. A. Rainwater. I have seen him up at Fortine, Montana, about the third or fourth of January, 1914, right along there. I had occasion to purchase stock in

the Northwestern Trustee Company, and purchased it from C. A. Rainwater. No one was present with him at the time. I purchased five shares of stock, paid twenty dollars a share for it. I didn't pay them anything in cash. I gave them a note for \$25, twenty-five down, and ten dollars a month. I afterwards paid \$35. I did not get the stock. He told me it was about the strongest company in the United States for its age, and he said they figured on paying about eight per cent on the first of August. I asked him when I was going to get a dividend; he said about the first of August, or such a matter, 1914. Well, I don't seem to remember anything that he said, of course. "Oh, well," I said to him, when he sprung this on me, I said, "If this here stock was such a good thing, there is a whole lot of these big fellows that would be ready to grab it," something like that, "that has got lots of money." He says, "That is where you are fooled, that is where you fool yourself," he says, "if you were worth a hundred million dollars, you couldn't buy but five shares, any one man." Well, he said, the way it was going at the present time, that he thought they would be paying somewhere in the neighborhood of 20 or 30 per cent in a few years. And the first dividend was to be paid about the first of August, 1914. He said some of the State officials were connected with it. He said there is no more chance for a fellow to lose anything on it. He said it was a paying proposition. Well, he showed me a circular with a bunch of names on it;

I don't remember who all was on it, but there was some of the directors that I know. I knew B. J. Boorman. I don't remember whose pictures were on the paper. I am acquainted with Sidebotham and Wilmot. They were to my place one time. I had conversation with them with reference to the company. Well, they told me it was a paying proposition, that I was foolish if I didn't take up the stock and pay for it. I don't know as they did say anything about dividends they were paying or would pay. I don't believe I said anything to Sidebotham or Wilmot about my notes bearing interest. I don't believe there was anything said about that.

Plaintiff's Exhibit No. 189, I have seen one of those before. It was sent me through the United States mail. That was after the time, I think, that Sidebotham and Wilmot were over there. I saw that before, at Fortine. I got it from the post office, from the United States mail. It come in an envelope, addressed to me; one just like that, I don't know if that is the one or not.

MR. WHEELER: I don't care to offer it in evidence, but simply call the attention of the jury to the fact that he did receive one like this—"Capital and surplus, \$500,000.00."

I afterwards received some letters from the Northwestern Trustee Company, or upon their stationery. I couldn't say how many of them; quite a few.

Q. And who did those letters purport to be signed by?



MR. KELLY: Object to that. The letters are the best evidence.

THE COURT: Is there anything special about these letters?

MR. WHEELER: The only purpose it to show that he received a lot of letters through the

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THE COURT: To what end?

MR. WHEELER: Simply to show that they are from the officers of the company, or that they were signed by the officers of the company. I am introducing these letters, if the Court please, to show the then connection of the defendants with the company, to show a conspiracy, not only to show a conspiracy, but also for the purpose of showing the fraudulent use of the mail; two objects, for which these letters are competent, I take it, to show the conspiracy itself, and the other is that they actually used the mails in the carrying out of the scheme.

THE COURT: As I said before, if you have not shown enough letters already to show that the company used the mails, why, you will never.

MR. WHEELER: I admit that some of the letters show this conspiracy itself.

MR. KELLY: I haven't seen them yet.

MR. WHEELER: If you haven't seen them, then you will.

THE COURT: Is there anything new in these letters?

MR. WHEELER: I am not particularly anxious except to show the connection of the various

officials and the persons mentioned in connection with the general scheme. I don't care particularly about it at this time.

THE COURT: I think that they might be competent. If you have any doubt as to the connecting of the defendant Rainwater with the company, to show that they were recognizing his agency, and to show that they permitted the letters to be sent by him, accepting the subscriptions received by him—the objection will be overruled, providing these letters are identified.

MR. WHEELER: The only purpose was to shorten up the records.

Plaintiff's Exhibit 190 I have seen before. I think I got them in Kalispell. I received it through the mail.

MR. WHEELER: We now offer in evidence Plaintiff's Exhibit 190.

MR. KELLY: If your Honor please, I would like to examine the witness about this exhibit.

THE COURT: Very well; proceed.

Q. You say you got this in Kalispell. Do you mean you went to the post office and got your mail there?

A. No, sir, it is delivered, R. F. delivery; I live on a rural route out of Kalispell.

MR. KELLY: We object to this, if the Court please, Exhibit 190, for the reason that it has not been properly identified, and the signature of W. C. Rae there, as Secretary and Treasurer, is evidently not made by him, because it is initialed, and

must have been put on there by someone else, and it is not shown that it was signed by him, and not shown that there is any authority for it.

JUDGE SMITH: We renew our general objection.

THE COURT: You will prove his handwriting later?

MR. WHEELER: We will prove that the letter was sent from the company's office, and will prove that the signature was attached thereto.

THE COURT: The objection is overruled.

Exception noted.

CROSS-EXAMINATION BY JUDGE SMITH.

Q. Mr. Euclair, you knew at the time Mr. Rainwater approached you that Mr. Boorman, the lumber dealer, was a director in that corporation, or did you not?

A. Why, I seen his picture on the circular.

Well, I don't know as it had something to do with influencing me to buy the stock; it might have. I knew Mr. Boorman. In a way he is connected with the lumber company by which I am employed.

Q. Now, did you understand also that this company was in process of formation, that they were selling the capital stock to get money into the treasury to go ahead with their project?

A. That is the way it was sprung to me.

The representations that were made as to the amount of dividends, and when they would pay them, that was all to be done in the future. Mr. Rainwater told me that they had to accomplish all

the ends for which the company had been formed, including the matter of paying dividends, and he thought that if they were as successful as they hoped to be, that the time might come when they would pay a dividend of 25 or 30 per cent. The circular that Mr. Wheeler showed me may be the identical one that I got out of the mail. I couldn't swear to that. I got one just like it though, like Exhibit 90, I never paid enough attention to notice whether that word "Authorized" was or was not on mine when I got it.

Said Defendants' Exhibit No. 190 is in words and figures as follows, to-wit:

PLAINTIFF'S EXHIBIT NO. 190.  
NORTHWESTERN TRUSTEE COMPANY  
LETTERHEAD.

June 27, 1914.

H. W. Auclair,  
R. F. D. No. 1,  
Kalispel, Mont.

Dear Sir:

We cannot understand why you have not met your obligation with the Northwestern Trustee Company. This Company holds your promissory note, identical in force and effect with several hundred others, whereby you agree to assist in the building of a large mortgage loan company.

This note must be met and there is no way whereby you may be released of your obligation, as the law says that it is not fair and just for anyone to decide not to enter into a business after he has al-

ready done so.

If there is any point you do not understand, or if there is any good reason why you should not pay us, this office would be glad to know of it.

With the success this corporation is attaining and the rapid development which is going on in the institution and the men now behind the institution, who are unquestionably among Montana's best men, we are at a loss to understand why you have not already met the above referred to obligation.

Kindly give us a reply by return mail in the enclosed envelope.

Yours very truly,

NORTHWESTERN TRUSTEE CO.

Per W. C. RAE,

Secretary and Treasurer.

C.

Amount past due .....	\$40.00
Due July 3rd.....	10.00
	<hr/>
	\$50.00

JUDGE SMITH: You see, gentlemen of the jury, the word "Authorized" there, and on this one it does not appear. I am showing the jury the actual physical words there, compared with this one, where it does not appear.

The company now has a judgment against me up there in that county for about sixty-five dollars, on account of unpaid subscriptions to its stock, in Flat-head County.



Re-Direct Examination.

By MR. WHEELER: On the pamphlet, Defendants' Exhibit No. 191, I never noticed anything of this kind with a stamp, "Capital stock, par value ten dollars per share, not a commercial bank."

THE COURT: The prosecution introduced in evidence a pamphlet whereon is printed, "Capital and surplus over \$500,000.00." To meet that, the defence introduces a pamphlet, and calls the witness' attention to the word "Authorized," stamped, in connection with "Capital and surplus over \$500,000.00," and ask him if that was on the one which he received. The witness testified that he did not remember. Now, there is no proof on the part of the defendant as yet that they ever sent out pamphlets with this word "Authorized" stamped on it, so I don't think that they would be bound by these other stamps, unless they later proposed to offer them.

JUDG ESMITH: No, your Honor, I don't. I propose to offer this one here. I didn't know those other stamps were on there. Here is one with them. I ask leave to substitute them.

MR. WHEELER: We object to the substitution at this time.

THE COURT: I think it was inadvertently done. They have a right to withdraw it. I don't say that you have any right to call for that later, if you want it, unless they offer it as a representation as to what they actually sent out; and when that time comes, the substitution may be made, and now

we will limit the exhibits to what it was introduced for by the defendant.

Witness excused.

Whereupon William H. Mannix, a witness called and sworn on behalf of the Government, testified as follows:

Direct Examination.

By MR. WHEELER: My name is William H. Mannix. I reside now at Finn, previously at Helmsville. My business is farming. Have been engaged in farming about eighteen years. Am farming for myself. Am acquainted with Mr. Sidebotham and Mr. Wilmot. I have had occasion to meet these men, in September, 1914, and I purchased ten shares of stock in the Northwestern Trustee Company, at twenty dollars per share. They said that they wanted to sell me stock. I didn't want to buy it, first, and after we had quite a few talks there, they said that the stock was selling for \$20.00, and it would be advanced to \$30.00 in a few days, and I didn't feel inclined to buy it. I told them so. They insisted, and finally I agreed to it; and they wanted to take my note they said, that there would not be any interest on it; the company was going to pay a dividend, and after the notes were drawn, they would carry eight per cent interest. Mr. Sidebotham said that there would not be any interest collected; the interest from the company would more than offset the interest, therefore, I should have something coming to me; that the dividends from the company would offset the interest upon my note,

and that I should have something in my favor. He said from the beginning they would pay dividends, on the two notes, I suppose, of one hundred dollars each, the way I understood it.

Well, they stated several of the State officials were interested in the company, among others. They said that Governor Stewart had considerable stock, but he was not connected with the company, only a stockholder. They made this representation to me, I would say, between the first and fourth of September, 1914. I couldn't say exactly the date. There wasn't anything said with reference to any of the State officials, any more than they mentioned me their names. Right now I couldn't state which ones they were, but I rather thought they said Mr. Alderson, if I remember rightly. I afterwards had a talk with Mr. Sidebotham, about two weeks afterwards, I think. Well, he told me then that the stock had advanced to \$30.00, and they were selling it at that, that my stock would be worth \$30.00, as well as the rest. Yes, they told me that any time I would care to dispose of my stock that they could take and handle it for me, to dispose of it, and get my money back. I afterwards took up that matter with them. They wrote and told me that they had a lot of treasury stock on their hands that they had not sold, and couldn't handle it until after that. I never received any dividend upon the stock. I paid interest upon my note, and I paid one note, one hundred dollars. Yes, they said that they were loaning money on farm land, and anyone buying stock

would be the preferred lenders, and I afterwards wrote to them for a loan, but I never got it.

Q. Can you tell us, your best recollection, as to what was said, not what your understanding was, what did they say?

A. That is my best recollection of it at the present time, that they were going to furnish their own appraisers, and would send them out among the farmers, without cost to the applicants for the loans, for an examination. I afterwards took it up with them, with reference to their making an examination of the land, and they stated that I would have to pay for the examination, a reasonable fee.

Whereupon George W. Mulry, a witness called and sworn on behalf of the Government, testified as follows:

#### Direct Examination.

By MR. WHEELER: My name is George W. Mulry. I am by profession a lawyer. I reside in Chicago. I am acquainted with Mr. Sidebotham and Mr. Wilmot. I first met Sidebotham three years ago this month. I never saw Wilmot until this week. I first met Mr. Sidebotham at St. Ignatius, Montana. He came to my house and outlined his inducement to me, and I subscribed for fifty shares of stock of the Northwestern Trustee Company, at twenty dollars a share. At that time I was working for the Reclamation Service, the Government. There was a young fellow named Miller with Mr. Sidebotham. He was a sort of an aid or agent, or something; I don't know just what



his function was.

Q. What inducements or representations were made to you by Mr. Sidebotham with reference to the stock, that induced you to purchase the same?

A. Well, really the only reason was what was in back of the outfit. I was informed that all of the big men in Montana were in it, all the cream of Great Falls, so to speak, high officials of the State, Governor, Lieutenant-Governor, Alderson, Rae, Ex-Mayor of Great Falls, Speer, and Bertoglio. Oh, there was a lot of men, big men, big business men; printers, I think some firm printers; I forget their names, Winje, or some such name. Quite a few of them were on the directory. Alderson and Rae, I believe, were directors, and Speer, I think Speer was. Why, I was guaranteed eight per cent, and it was Sidebotham's conservative estimate that it would not be long before it would be running up to 30 or 36 per cent. That was in comparison with some tabulated statistics he had there, from eastern concerns, like the New York Life and some of the New York banks, and so forth. He showed what dividends they had declared, and so forth, and saw no reason why this could not be duplicated. Mr. Sidebotham said he and this Wilmot were the fiscal agents, and he also was the president of the concern, I believe. He showed me a circular. It was in black and red ink. It was a sort of newspaper. I don't know whether it was published as a daily, or a periodical paper, at the time. It was five cents a copy, as I remember it, and it had a large, sort of



composite photograph of all the directors and big men in the outfit, and he was in the center of it his picture. He was surrounded by Wilmot, and, I cannot just recall some of the pictures, and its outlines, what they proposed to do. He had a picture of a unit apartment, or some such term as that, some unit ownership of apartments, saying they were going to build. Oh, it showed what they proposed to do and what they thought they could do, a general sort of a regime of that line of work they intended.

I purchased fifty shares of this stock finally. I paid them one hundred dollars cash, and gave them a note for \$900.00. They made just the one visit. He came to the project and he sold some stock to a Mr. Thompson, and Mr. Thompson was quite an enthusiast over it, Mr. Joseph E. Thompson. Mr. Thompson referred him to me, and he came up to my house, and Mr. Thompson was with him at the time.

At the time I purchased the stock, Sidebotham and his aid, or agent, or whatever he was, Miller, and Thompson, and my wife, were there. I paid one hundred dollars in cash.

Q. Subsequent to that time did you have some correspondence with Mr. Sidebotham?

A. I had considerable correspondence, covering a period of about two years, I guess.

Plaintiff's Exhibit 192 I have seen before. I received it at St. Ignatius, through the United States mail. Exhibit 192 was in an envelope.

MR. WHEELER: We now offer in evidence Plaintiff's Exhibits 192 and 193.

JUDGE SMITH: I interpose the same general objection to that, that it is incompetent, irrelevant and immaterial, and doesn't ten to prove any of the issues in this case; it has not been properly identified.

THE COURT: What is this letter? Is this in the indictment?

MR. WHEELER: No, sir, it is not. We offer it particularly because it referred him to Mr. Alderson; and later there will be some correspondence introduced.

THE COURT: Objection overruled.

Exception noted.

Plaintiff's Exhibit No. 192 was read in evidence, and is in words and figures as follows, to-wit:

PLAINTIFF'S EXHIBIT NO. 192.

NORTHWESTERN TRUSTEE COMPANY  
LETTERHEAD.

February 17, 1914.

Mr. Geo. W. Mulry,

C/o U. S. R. S.,

St. Ignatius, Montana.

Dear Sir:

In reply to your letter of the 13th inst. will say that I, personally, answered your previous letters upon my return to the City, as they were of such a nature that no one in the office felt they could justly answer same.

You speak of misrepresentations handed out by

me and I would like very much to have you call my attention to the same. You also state that I style myself as President; I was President at that time and am President today, although for some time I have contemplated resigning from the Presidency. My resignation has been in for some time to take effect upon the election of my successor, and such election has not been made. A short time ago, however, one of our local men was elected, but on account of other business matters, did not accept, therefore, I am still the President. I am also connected with the firm of Sidebotham & Wilmot, which you speak of, and would like very much to have the information you seem to have at hand regarding me not having any connection with the system or the institution.

Your note is entirely out of our hands and I presume long before this you have been written by the owner of same.

We do not understand why you or any one else should be dissatisfied with your investment in this institution. I wish to refer you to a sworn affidavit by the Assistant Secretary of the Company, which I believe is in the hands of Joseph B. Thompson of St. Ignatius. This may give you some information as to the standing of the institution. If you desire any further information, we would appreciate very much your writing Secretary of State A. M. Alderson, who I am sure can give you some information about the Company that will prove interesting, and you will possibly not feel that you

have been buncoed, as stated in your letter.

If you desire to have your stock placed on the market for sale, Sidebotham & Wilmot will be glad to list same and place it on the market. There is quite a demand for the stock and it is selling readily, in fact, we closed a sale to a Bank a few days ago.

Yours very truly,

SIDEBOTHAM & WILMOT.

Per ROBERT R. SIDEBOTHAM.

R. R. S./J. H.

Whereupon Plaintiff's Exhibit 193 was received in evidence, read to the jury, and is in words and figures as follows, to-wit:

Exhibit 193 Plff.

Sidebotham & Wilmot, Fiscal Agents.

Northwestern Trustee Company.

General Offices, Great Falls, Montana.

Great Falls Feb. 17-14, 7 — PM, Mont.

Canceled U. S. Stamp Two Cents.

Mr. George W. Mulry,

115 So. Kenilworth Ave.,

Oak Park, Ill.

— — — — —  
Plaintiff's Exhibits 193 and 194 I have seen before. I received them at my office in Chicago, through the mail.

MR. WHEELER: We now offer in evidence Plaintiff's Exhibits 194 and 195.

JUDGE SMITH: I object to them for the same reasons objected to No. 192.

THE COURT: Objections overruled, subject to a motion if not shown to be sufficiently identified.

This letter was received by me in answer to letters written by me. I either wrote it to the Northwestern Trustee Company or Sidebotham, or Wilmot. I wrote interchangeably—I don't know just which they were to.

Whereupon Plaintiff's Exhibit No. 194 was received in evidence, read to the jury, and is in words and figures as follows, to-wit:

Exhibit 194 Plff.

NORTHWESTERN TRUSTEE COMPANY

General Offices, Great Falls, Montana.

Great Falls, Jan. 30-15, 9 — PM, Mont.

Canceled U. S. Stamps One Cent.

MR. GEO. W. MULRY,

Chicago, Illinois.

C/o Miller's Mutual Casualty Ins. Co.

Whereupon Plaintiff's Exhibit 195 was received in evidence, read to the jury, and is in words and figures as follows, to-wit:

Exhibit 195 Plff.

Northwestern Trustee Company

General Offices, Great Falls, Montana

Great Falls, Apr. 17-16, 7 — PM, Mont.

Canceled U. S. Stamp

MR. GEO. W. MULRY,

Chicago, Illinois.

Millers Mutual Casualty Ins. Co.



NORTHWESTERN TRUSTEE COMPANY

(Letter-head)

(Incorporated)

Great Falls, Montana, Jan. 30, 1915.

Mr. George W. Mulry,

C/o Miller's Mutual Casualty Ins. Co.,

— Chicago, Ill.

Dear Sir:

Your letter of January 20th has been received. We note your authority for re-selling your stock and that you are asking us to send you draft for \$100.00, the amount you have advanced.

This matter has been turned over to our Fiscal Agents' Department, which has the selling of all our stock. The Company is pressing the Fiscal Agents' Department, however, to sell the balance of the Treasury stock, and feel satisfied that as soon as they have finished the sale of the Treasury stock they will immediately sell yours and at that time remit to you the amount you have paid.

We are sorry that you are desirous of selling your stock, as we believe it to be a very good investment. We now have a dividend fund accumulating and it is expected that in August we will pay a creditable dividend to the holders of our stock.

Hoping that you will make up your mind to hold the same, we are,

Yours very truly,

NORTHWESTERN TRUSTEE CO.

(Signed) Per M. A. CORT.

Asst. Sec. and Treas.

MR. WHEELER: We now offer in evidence Plaintiff's Exhibit No. 126.

JUDGE SMITH: I object to it for the reason stated.

THE COURT: What was the date of Exhibit No. 194, just read?

MR. WHEELER: No. 195, January 30, 1915.

Exhibit 196, a letter, was in answer to a communication which I directed to Sidebotham and Wilmot. I couldn't say whether it was to the Northwestern Trustee Company, or Sidebotham and Wilmot. Most of them were the Northwestern Trustee Company.

Whereupon Plaintiff's Exhibit No. 196 was received in evidence, read to the jury, and is in words and figures as follows, to-wit:

Exhibit 196 Plff.

NORTHWESTERN TRUSTEE COMPANY.

(Letter-head.)

(Incorporated.)

Great Falls, Montana, April 17, 1916.

Mr. Geo. W. Mulry,

Millers Mutual Casualty Ins. Co.,

Chicago, Ill.

Dear Sir:

We have your letter of April 14th. The owner of your note at this time is this Company. The note will be sent to any bank you designate with your stock certificate, and the same will be delivered to you upon payment of the amount due. Who had your note before we got it is something which we are not interested in.

We note in your letter that it will be necessary for us to give you certain information before your note will be paid. Any information you get from this office you are welcome to, and you have had all you are going to get. Now, if you understand English, I trust that you will understand that it is useless to try to pump this office.

Yours truly,

NORTHWESTERN TRUSTEE CO.

(Signed) Per M. A. CORT.

*Asst. Treas.*

— — —

That letter was received in answer to correspondence which I directed to the Northwestern Trustee Company or to Sidebotham and Wilmot; and it was received by me at St. Ignatius, Montana.

MR. WHEELER: We now offer in evidence Plaintiff's Exhibits 197 and 198.

JUDGE SMITH: Same general objections, if your Honor please.

THE COURT: It will be admitted.

Exception noted.

Whereupon Plaintiff's Exhibit No. 197 was received in evidence, read to the jury, and is in words and figures as follows, to-wit:

Exhibit 197, Plff.

Sidebotham & Wilmot, Fiscal Agents  
NORTHWESTERN TRUSTEE COMPANY  
General Offices, Great Falls, Montana  
Great Falls, Feb. 12-14, 7 — PM, Mont.  
Canceled U. S. Stamp

MR. GEO. W. MULRY,  
St. Ignatius, Montana.

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Whereupon Plaintiff's Exhibit No. 198 was received in evidence, read to the jury, and is in words and figures as follows, to-wit:

Exhibit 198, Plff.

NORTHWESTERN TRUSTEE COMPANY  
(Letter-head.)  
(Incorporated.)

Great Falls, Montana, February 12, 1914.

Mr. Geo. W. Mulry,  
St. Ignatius, Montana.

Dear Sir:

Your letters of the 2nd and 9th inst. have just been brought to my attention upon my return to the city. Regarding your note for \$900.00 and interest, will say that same was sold to Ellis Rodden of this City some time ago. As you probably know an institution of this kind must realize its paper at once, therefore, we no longer have any connection with this note. We told Mr. Rodden that you would remit shortly and he has been patiently waiting for your remittance. He has undoubtedly wrote you concerning same. You assured me in a letter dated January 23rd.

It is, indeed, unfortunate that you did not realize what you stated you were realizing in your letter of recent date, and we hope that it will not embarrass

you to meet the promissory note signed by yourself and Mrs. Mulry.

With best wishes, we are

Very truly yours,

SIDEBOTHAM & WILMOT.

(Signed) Per ROBERT R. SIDEBOTHAM.

R. R. S./J. H.

— — —

Subsequent to that time I wrote two letters. I think I received two replies from Mr. Alderson.

Exhibit No. 199 is a carbon copy of a letter I wrote to Mr. Alderson. Plaintiff's Exhibit No. 200 is the answer I received in reply thereto.

MR. WHEELER: We offer Plaintiff's Exhibits 199 and 200.

JUDGE SMITH: The same general objection, if your Honor please.

THE COURT: Just a moment. Let me see this. What is the object of this?

MR. WHEELER: Simply to show notice to Mr. Alderson, the dealings of the agents, the misrepresentations made.

THE COURT: Objections made by the defendants are overruled.

Exception noted.

Whereupon Plaintiff's Exhibit 199 was received in evidence, read to the jury, and is in words and figures as follows, to-wit:

Exhibit 199 Plff.

November 11, 1914.



Hon. A. M. Alderson,  
Secretary of State,  
Helena, Montana.

Dear Sir:

I take the liberty of writing to you in your capacity as President of the Northwestern Trustee Company.

Last January I subscribed for 50 shares of stock of this concern, giving R. R. Sidebotham \$100 in cash and my note for \$900. I had every intention at the time of making full payment on this subscription, but owing to misrepresentations made by Mr. Sidebotham to me, which, of course, I can verify, I quite naturally would have nothing more to do with a concern, that, so far as I was concerned, was not open and above board.

Mr. Sidebotham informed me that he had passed up my note to a third party, an Ellis Rodden, of Great Falls, and that he, Sidebotham, had no more connection with the note, or to use his own words—"it is entirely out of our hands," when, as a matter of fact, Rodden at the time was Sidebotham's agent. Again, the matter was turned over to Sidebotham's attorney, Norskog, of Great Falls, who wrote me that his "client," Mr. Rodden, turned the note over to him for collection, and to use Norskog's words, "I look after this business," when, as a matter of fact, Norskog informed a fraternity brother of mine, who is an attorney in Great Falls, that he never heard of Rodden. Of course, I stand ready to prove every word of the above.

You can, therefore, readily understand how I would feel about investing another cent in such an enterprise. However, inasmuch as Sidebotham has had my \$100 these many months and has given to me no consideration for same, I believe I am entitled to something to show for this \$100, and I appeal to you as a man and a gentleman in your high office to direct that proper adjustment be made in the matter. I can truthfully say that it was the fact that such men as you and other well known persons were connected with this concern that assured me that it must be all right, and if, as the prospectus of the company would indicate, the company is doing a strictly legitimate business, there should be no hesitancy in the company's doing by me what is fair and equitable.

Yours very truly.

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Whereupon Plaintiff's Exhibit 200 was received in evidence, read to the jury, and is in words and figures as follows, to-wit:

Exhibit 200, Plff.

State of Montana.

Office of Secretary of State.

A. M. ALDERSON, Secretary.

COPELAND C. BURG, Deputy.

11-30-14.

Mr. Geo. W. Mulry,

Chicago, Ill.

My Dear Sir:

Your letter of November 11 has just been called

to my attention on my return from an official trip to the Eastern part of Montana.

You do not state what misrepresentations were made to you by Mr. Sidebotham in order to induce you to subscribe for certain shares of stock in the concern. I would be glad if you would advise me just what misrepresentations were made to you by Mr. Sidebotham, in order to induce you to subscribe for stock. Of course, if misrepresentations were made concerning the character and condition or affairs of the Company in any way, I, as president of the Company, feel that I ought fully to be informed, not only for your protection, but for mine as well. Therefore, I would be very glad if you would advise me just what Mr. Sidebotham said to you at the time you purchased the stock from him.

As to the methods pursued by Mr. Sidebotham for the collection of notes which he takes in payment for stock, that is something which the Company itself has nothing to do with. As President of the Company, however, I am vitally interested in representations that are made to stockholders in inducing them to purchase stock, so I will be very much pleased if you will advise me just what representations were made to you along that line.

Very truly yours,

(Signed) A. M. ALDERSON,  
President, Northwestern Trustee Co.

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Plaintiff's Exhibits 204, 201 and 208 I have seen before. I received them. I have seen Exhibits 201,

202 and 203, before. Exhibit 201 is a carbon copy of a letter I wrote to Mr. Alderson under date of December 14, 1914. Exhibit 203 is an answer, in reply to a letter that I received. Exhibit 204 is a letter that I wrote to Mr. Alderson. Exhibit 205 was a letter that I received in reply.

MR. WHEELER: We now offer in evidence Plaintiff's Exhibits 201 and 205.

I received those through the mails. They are replies to my letters.

JUDGE SMITH: We interpose the same general objection, as Defendants Rae and Alderson have no objection to a speedy introduction of these letters.

THE COURT: Objections will be overruled.

Exception noted.

Plaintiff's Exhibit 201 was received in evidence, read to the jury, and is in words and figures as follows, to-wit:

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PLAINTIFF'S EXHIBIT NO. 201.

December 17, 1914.

Hon. A. M. Alderson,  
Secretary of State,  
Helena, Mont.

Dear Sir:

I have your letter of November 30th with reference to Northwestern Trustee Company.

Mr. Sidebotham told my wife and me, in the presence of two other witnesses, that many of the influential men of the Government service on the Flat-

head Project, where I was working at the time, had subscribed for Northwestern stock, mentioning among others, E. D. Covell, Asst. Engineer, and S. G. Swigart, Supt. of Irrigation. Mr. Sidebotham stated to us that Mr. Covell had subscribed for \$2,500 of stock, whereas Mr. Covell later informed us he would have nothing to do with Sidebotham from the start. Mr. Covell further stated that Sidebotham informed him he could take out his subscription at that time (January) and that interest would not accrue thereon until the following May.

On taking the matter up with Mr. Swigart he advised me he made no cash payment whatever, but simply gave a note which he decided he would not honor in the light of subsequent developments.

Mr. Sidebotham was so chivalrous as to suggest to us that if we did not wish to go further into the matter than our \$100 investment this would be perfectly satisfactory. Acting on the above statement of facts I subscribed to 50 shares, paying cash for 5 shares. Naturally I did not dream that Sidebotham would come back at me and say he disposed of my note and that it was "entirely out of his hands," as the assignment of my note was too palpably absurd to merit consideration at the time. Subsequent investigation has, of course, only confirmed my conclusion in the matter, viz., the note was passed over to one of Sidebotham's assistants in his office.

You will, therefore, understand that this whole transaction is tainted with fraud on the part of Sidebotham and his attorney Norskog. If the mis-



representations at the time of my contract with Mr. Sidebotham are not material enough to vitiate the contract the subsequent action on the part of Sidebotham and Norskog would, of course, preclude any further claim they would have on me, taken from a purely legal standpoint.

However, I was actuated in taking this matter up direct with you, Mr. Alderson, because in the light of my dealings with this concern, I believe that if you would see justice and fair dealing done out of all this mess, you would direct Mr. Sidebotham to at least send me certificate of stock for the five shares that I have paid good money for with nothing to show for same. Of course, Mr. Sidebotham has had this \$100 almost a year now and the interest on same while I have received no consideration. As a matter of compromise, however, I would much prefer \$50 than the stock certificate for any amount of this stock.

In event that nothing is done in the premises, however, I will immediately place the matter in the hands of the postal authorities for such action as they may see fit.

Trusting you will exert your good influence to see that proper disposition is made in the premises, I am,

Yours very truly.

Whereupon Plaintiff's Exhibit 202 was received in evidence and is in words and figures as follows, to-wit:

Exhibit 202, Plff.

Return to Secretary of State, Helena, Montana.

Helena, Dec. 26-14, 5 — PM, Montana.

Canceled U. S. Stamp.

MR. GEORGE W. MULRY,

C/o Millers Mutual Cas Co.,

Insurance Exchange Bldg.,

Chicago, Illinois.

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Whereupon Plaintiff's Exhibit 203 was received in evidence, read to the jury, and is in words and figures as follows, to-wit:

Exhibit 203, Plff.

State of Montana.

Office of Secretary of State.

A. M. ALDERSON, Secretary.

COPELAND C. BURG, Deputy.

Helena, December 26, 1914.

Mr. George W. Mulry,

Chicago, Illinois.

My Dear Sir:

Your letter of December 17, referring to your affairs with the Northwestern Trustee Company and Robert R. Sidebotham, is received.

You may be sure that I am interested in seeing fair dealing in connection with the company. I have today sent a copy of your letter to Mr. Sidebotham, requesting that he advise me concerning the statements made therein.

Very truly yours,

A. M. ALDERSON.

Whereupon Plaintiff's Exhibit 204 was received in evidence and is in words and figures as follows, to-wit:

Exhibit 204, Plff.

January 7, 1915.

Hon. A. M. Alderson,  
Secretary of State,  
Helena, Montana.

Dear Sir:

I have your favor of December 26th, with reference to Northwestern Trustee Company, and have also received a letter from the company. They advise that the stock in the company has increased in value \$10 a share and desire to know whether I wish my stock resold. It is needless to say that I do, and inasmuch as the stock has increased 50% in value there certainly should be no hesitancy in making proper adjustment of the matter.

I will, therefore, thank you to direct that the stock be resold and proper adjustment be made with me.

Assuring you your efforts in the matter are greatly appreciated, I am,

Yours very truly.

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Whereupon Plaintiff's Exhibit 205 was received in evidence and is in words and figures as follows, to-wit:

Exhibit 205, Plff.

State of Montana.

Office of Secretary of State.

A. M. ALDERSON, Secretary.

COPELAND C. BURG, Deputy.

Helena, Montana, Jan. 13, 1915.

Mr. Geo. W. Mulry,

Insurance Exchange Bldg.,

Chicago, Ill.

Dear Sir:

Your letter of January 7th, relative to your difficulties with the Northwestern Trustee Company, is at hand. I am not actively engaged in the affairs of the Company, and I would be glad if you would endeavor to make your adjustment with the agents, Mr. Sidebotham and Mr. Wilmot, of Great Falls.

Very truly yours,

A. M. ALDERSON,

Secretary of State.

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#### Cross-Examination.

By MR. KELLY: I am thirty-three years old. I went to Princeton, and to a law school in Chicago, and am practicing law in Chicago. I was a lawyer when I talked this subscription matter with Sidebotham, and read the contract which I signed.

#### Cross-Examination.

By JUDGE SMITH: I have practiced law. Engaged in general practice. Am doing that now. I worked at St. Ignatius, I think about three months. They showed me a sort of a newspaper, with a composite photograph of certain officers of the company in it. Strictly speaking, Mr. Smith, "composite" means a bunch of photographs taken to-

gether. I just said that as a sort of descriptive term. It was not composite; it was a bunch of photographs. It was as a descriptive term, but literally speaking, no.

Witness excused.

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Whereupon James Best, a witness called and sworn on behalf of the Government, testified as follows:

Direct Examination.

By MR. WHEELER: My name is James Best. Am ranching at the present time at Canyon Creek. Have been engaged in ranching more or less for the last twelve years, here in Montana. Am acquainted with Mr. Sidebotham. I met him once at the time I bought the stock from him. I bought thirty-four shares. I paid \$30.00 a share for it. I couldn't go through with all the details. He figured it out to me, what profits there would be in the way of the system they had of borrowing money and loaning money, and the profits they would have in making money; I couldn't go into the details. I asked what dividends they expected to pay in the coming season. He told me they expected to pay twenty per cent. It was a kind of bank and loan corporation, the way I understood it; they loaned money on farm loans and mortgages. He had a list there of a lot of names; they were practically all strangers to me; some of them I heard of; I was not acquainted with them. It would be a pretty hard matter for me to say the names, Mr. Alderson and Mr. Rae; he give



me a letter with reference to them. He asked me to refer to those.

Cross-Examination.

By JUDGE ESMITH: The capital stock was not all paid. They were still selling capital stock. These expectations that he held out to me were based upon the proposition of the company being successful in selling this capital stock. That is the way he figured it to me, I take it, yes, sir.

Witness excused.

Whereupon H. C. Gadoury, a witness called and sworn on behalf of the Government, testified as follows:

MR. WHEELER: This \$900 that Mr. Mulry spoke of never has been paid, he still owes it. We admit that.

Direct Examination.

By MR. WHEELER: My name is H. C. Gadoury. I reside at Yuma, Arizona. I previously resided at Fletcher, Montana, nine miles from there. I am acquainted with Mr. Sidebotham and Mr. Wilmot. I also resided at Browning. I met Mr. Sidebotham in the winter, in the middle of December, 1913, and had a conversation about the Northwestern Trustee Company; with Mr. Sidebotham and Mr. Wilmot, both. I subscribed for stock in the Northwestern Trustee Company, twenty-five shares, at twenty dollars per share; paid one hundred dollars down, gave my note for the balance. The note has not been paid.

Q. Now, what representations, if any, were

made to you at the time, by either Mr. Sidebotham or Mr. Wilmot?

A. Mr. Sidebotham referred to the Bob Ford bank, and stated it would be a life institution, the Ford bank, in Great Falls. And he stated about the marvelous growth, and that the institution he was representing was of similar nature. I don't remember what was said in regard to the protection of the company. No mention was made of the interest that was to be paid, but it was stated that it would pay over eight per cent interest. He didn't mention the time when any dividends would be paid. Mr. Sidebotham came up twice, and Mr. Wilmot came up once. Mr. Wilmot was there approximately in February, 1914: I don't know just what date. I know a Mr. Coiner. He was an engineer in the reclamation service. He has now left the service. He was present in all the conversations. Why, in reference to the property increasing, Mr. Sidebotham, the first time he was up there, we subscribed for stock; the second time he came up, it was in reference to paying the note, which we refused to pay; then Mr. Wilmot came up there, and he told us that if we would pay the note in full, that he would use his best efforts to sell the stock for us, and that there was to be an increase undoubtedly, from twenty to thirty dollars, and we would benefit by the sale, if the sale was made after the increase. On the second trip, Mr. Sidebotham—it was during the week day, and we were at work in the office, and when he came in all the other boys went into the

other room, that was not interested, and Mr. Sidebotham on the previous trip stated that no stock was sold for less than twenty dollars, and then Mr. Coiner, or one of us, stated that no doubt it could be proven that stock had been sold for less than ten dollars. He stated yes, it had, but by reading the contract, he said, you will find that no agents, or the Northwestern Trustee Company, was not responsible for any statements made by its agents. My best recollection, he stated the size of the company was between five hundred thousand and six hundred thousand dollars.

#### Cross-Examination.

By JUDGE SMITH: He didn't mention anything about the authorized capital stock. He said the company was worth between five hundred and six hundred thousand dollars. He did not tell me how that amount was made up. He didn't tell me that that amount was made up by including stock that was optioned out. My note still remains unpaid.

Witness excused.

Whereupon Arthur F. Smyth, a witness called and sworn on behalf of the Government, testified as follows:

#### Direct Examination.

By MR. WHEELER: My name is Arthur F. Smyth. I reside at Craig, Montana. I am a farmer. Have resided at Craig between two and three years. Am acquainted with Mr. Sidebotham. I met Mr. Sidebotham once or twice. I don't remem-

ber to have ever met Mr. Wilmot. Met Mr. Sidebotham on the place that my father had rented, out in Stearns, Montana, in May, 1914. I am twenty-three years old at the present time. At the time I had the conversation with him I was twenty-one. I purchased stock in the Northwestern Trustee Company, five shares, at twenty dollars per share. I have paid forty-five dollars on it. I did not receive any stock. Well, I was told of the prominent men that were in with the company, backing the company up, and at any time I wanted my money back, and was not satisfied, I could get it back. I don't remember any of the names of the prominent men that he told me were interested in the company, backing the company. I was not familiar with them at the time. The stock was raising at that time, and there was to be a meeting held in August, following, for the purpose of raising the stock. They were to loan money to stockholders at the rate of one or two per cent, I believe, less than the banks around this vicinity. As near as I understood, I believe a person had to be a stockholder to make a loan. He said that, anyone that would make a loan, the company would go to the stockholders and ask their opinion on the matter, as to whether it was a good loan or not, a safe investment. There were no other representations made to me with reference to the payment of interest, of dividends, that I remember of.

Cross-Examination.

By JUDGE SMITH: I still owe the balance of

that hundred dollars. I never received a single letter, or anything, from the post office department about this matter; no, but I have written to him concerning the matter. I filled it up and sent it back.

Witness excused.

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Whereupon Emil Anderson, called and sworn as a witness on behalf of the Government, testified as follows:

Direct Examination.

By MR. WHEELER: My name is Emil A. Anderson. I reside at Kalispell. Am in the Forest Service of the United States. Am acquainted with Mr. C. A. Rainwater. First met Mr. Rainwater in March, 1914, at Radner, Montana. He represented himself as a salesman for the Northwestern Trustee Company, and sold me twenty-five shares of stock of that company. I gave two notes for it, for two hundred and fifty dollars, each for two hundred and fifty dollars. I paid the first note, for two hundred and fifty dollars. I did not receive any stock. The representations that were made to me by Mr. Rainwater were that it was a going concern, and would pay dividends of at least eight per cent, he said; that it was capitalized for a million dollars, and the par value of the stock was twenty dollars per share. I asked him how much it was costing the company to promote this stock, and he said five per cent. There were a great many things said. I don't recall them all now. He mentioned



Mr. Alderson and Mr. Rae and Mr. Bertoglio, as being a director of the company, and officers. They were state officers, and their stock, or their being in the company, was evidence that it was a very good thing. At that time about \$700,000 worth of the stock had been sold, as near as he could tell.

Exhibit 207 I have seen before. I saw it at Radner; received it through the United States mails. It was enclosed in this kind of envelope. I don't remember the post-mark. That letter was in reply to a letter that I had written. Yes, I had sent them a check for \$2.30, to pay the interest on a note for \$250. I sent it to the Northwestern Trustee Company.

MR. WHEELER: We now offer in evidence Exhibit 207, Plaintiff. This is for the purpose of showing that the money was received by the Northwestern Trustee Company.

JUDGE SMITH: The defendants whom I represent object to it, as immaterial, and irrelevant.

THE COURT: Well, I think it might serve to connect up with this transaction that the witness testified about. If a scheme to defraud is proved, why, it will show some use of the mails, through Rainwater's transaction. The objection will be overruled.

Exception noted.

Exhibit 207 for the Plaintiff was read in evidence, and is in words and figures following, to-wit:

PLAINTIFF'S EXHIBIT NO. 207.

NORTHWESTERN TRUSTEE COMPANY  
LETTERHEAD.

July 30, 1914.

Mr. Emil A. Anderson,  
Stryker, Mont.

Dear Sir:

Yours of the 28th received, enclosing check for \$2.30 in payment of interest on note paid July 13th. Please accept thanks for your promptness in attending to this matter.

Your other note for \$250.00 will have \$7.70 accrued interest on August 10th. From the 21st of March to the 10th of August is 4 months and 19 days, and the note bears interest at the rate of 8%.

Enclosed find cancelled note for \$250.00.

Yours very truly,  
NORTHWESTERN TRUSTEE CO.  
WM. C. RAE,  
Sec. and Treas.

Cross-Examination.

By JUDGE SMITH: I wrote several letters to the company, in which I begged them to extend the time of my note, saying that I didn't have the money. I haven't paid it yet. I haven't received any stock. I expected to get it after one payment was made. I expected to get it when full payment was made. Well, I understood the selling of the stock cost five per cent. He told me that in good set terms, that the five per cent included all the overhead charges of selling the stock, including the services of the selling agents. I believed it.

Re-Direct Examination.

By MR. WHEELER: Exhibit 208 I have seen before. I received it through the United States mail, in reply to a letter I wrote to the company.

JUDGE SMITH: If your Honor please, we make the same objection to this Exhibit No. 208; we also object to it as incompetent, irrelevant and immaterial.

THE COURT: The objection will be overruled. Exception noted.

Thereupon Exhibit No. 208 was read in evidence, and is as follows:

Exhibit 208, Plff.

NORTHWESTERN TRUSTEE COMPANY

(Letter-head.)

(Incorporated.)

Great Falls, Montana, June 3, 1914.

Mr. E. A. Anderson,

Stryker, Mont.

Dear Sir:

Your letter of May 30th duly received. In reply will say that it is impossible for us to release you from your obligation to this institution, as your notes are now listed amongst our assets, and if Mr. Rainwater, our representative, made any such statements as contained in your letter it was without our authority. However, you had written notice that any statements made by our Mr. Rainwater were not binding upon the Company, except as stated in the contract. For your information we are quoting the exact wording of the contract signed by you:

“No agent or person whomsoever has authority to vary the terms of this contract or has the power to bind the Northwestern Trustee Company or Sidebotham & Wilmot by any statement or agreement other than herein set forth.”

No business could be conducted where men, over the age of 21, who enter into written contracts and signed promissory notes to build up a company where it would be optional to drop out if they so desired, and we are sure you can appreciate what has just been said in this regard.

The Company is in splendid financial condition and is progressing rapidly, which you will have known by this time by letter sent you by our President, Mr. A. M. Alderson, who is Secretary of the State of Montana.

If it is a case of your being a little hard up at this time and are unable to meet your payments, we will simply reduce the amount due us 50% and allow you to make it up at a later date. We hope you will favor us with  $\frac{1}{2}$  the amount now due, which is \$250.00, within the next several days and that it will not be necessary for us to take further steps for the collection of this note.

We are, indeed, sorry that you are under any misunderstanding concerning the purchase of our stock, as the stock is being sold daily on the merits of the institution, there being over 65 new stockholders added within the past 60 days. It is only a question of a short time when the stock of this

institution will be extremely valuable.

Yours very truly,

(Written on margin.)

NORTHWESTERN TRUSTEE CO.

W. C. RAE,

Sec. and Treas.

C.

Re-Cross-Examination.

By JUDGE SMITH: That statement that no agent has any authority to vary the terms of the contract was in the written contract when I signed it.

Witness excused.

— — —

Whereupon John W. Coburn, a witness called and sworn on behalf of the Government, testified as follows:

Direct Examination.

By MR. WHEELER: My name is John W. Coburn. Am a practicing attorney. I am acquainted with Mr. Sidebotham. Have known him about three years, I think. I reside at Cut Bank, Montana. I purchased stock in the Northwestern Trustee Company. I subscribed for some. I don't remember the month. It was during the year 1913. I think fifty shares, at ten dollars a share. I gave my note for \$500. Why, the capital stock was told me to be \$500,000, and I think Mr. Sidebotham stated to me that, at the time that I made subscription for this stock, they would no doubt be paying eight per cent within the year.



Exhibits 209 and 210 I believe are the notes I signed for stock. It was twenty-five shares, at \$20 per share, that I purchased, according to that. My arrangement was that I was to be appointed loan agent in the vicinity of Cut Bank, and to loan money on first mortgages, on farms at eight per cent interest, and if I could loan it for more than that, up to ten per cent, the extra per cent would be my commission, and that commission would go to pay up these notes.

MR. WHEELER: We now offer in evidence Plaintiff's Exhibit 210, being the notes.

Those notations in pencil were written on the bottom of that at the time that I subscribed.

JUDGE SMITH: Same objection to them.

THE COURT: I don't see any relevancy to them.

MR. WHEELER: This will be followed up, to show that the statements written on the bottom were not fulfilled, that is all.

THE COURT: The objection will be overruled. Exception noted.

Whereupon Plaintiff's Exhibit 209 was received in evidence, and is in words and figures as follows, to-wit:

Exhibit 209, Plff.

\$500.00/100.

Cut Bank, Feb. 14, 1914.

Thirty months after date for value received I promise to pay to myself, or order, Five Hundred Dollars negotiable and payable at the office from which notice is sent, with interest at the rate of

eight per cent per annum from date until paid interest payable semi-annually together with reasonable attorney's fee in case suit is instituted on this note, or this note or any part of it, is collected by an attorney. The makers, endorsers and guarantors severally, waive presentment for payment, notice of non-payment, protest, and notice of protest on this note.

Payable \$125 on March 15, 1914, and \$15 per month until paid.

Due .....

No. 5,215.

JOHN W. COBURN.

This note is given conditioned that J. W. Coburn is made loan agent for the Cut Bank Country by the Board of Directors.

(Written across face of note.) "Cancelled Jul. 31, 1915."

Wehreupon Plaintiff's Exhibit 210 was received in evidence, and is in words and figures as follows, to-wit:

Exhibit 210, Plff.

544.

SIDEBOTHAM & WILMOT, Fiscal Agents.

Capital Stock \$500,000.00.

General Offices, Lower Floor Tod Building, Great Falls, Mont.

Subscription No. 5,215.

Subscription for Capital Stock.

Sidebotham & Wilmot, Fiscal Agents.

Subscription for Capital Stock, \$500.00/100.

No. of Shares, 25.

I, John W. Coburn, do hereby subscribe to Sidebotham & Wilmot, Fiscal Agents, for twenty-five shares of the capital stock of the Northwestern Trustee Company and agree to pay therefor the sum of Twenty Dollars (\$20.00) per share, payable as follows: \$125.00/100 May 14, 1914, and \$15 per month until fully paid as evidenced by certain promissory notes.

Stock certificates to be delivered when final payment is made and I hereby agree that should I fail to pay said notes when due or to make satisfactory arrangements for the payment of the same, that this subscription shall be void at the option of Sidebotham & Wilmot, and that I shall forfeit to Sidebotham & Wilmot any payments made thereof.

No agent or person whomsoever has authority to vary the terms of this contract or has the power to bind the Northwestern Trustee Company or Sidebotham & Wilmot by any statement or agreement other than herein set forth.

Dated at Cut Bank, this 14 day of Feb., 1914.

Agent **SIDEBOTHAM & MILLER.**

(Signed) **JOHN W. COBURN.**

The above payments are payable only upon the condition that J. W. Coburn is made Loan Agent by the Board of Directors.

(Written on the margin.) "Sidebotham Option."

(Written across face of note.) "Sidebotham Option."

Make all checks and moneys payable "Sidebotham & Wilmot, Fiscal Agents."

“Cancelled Jul. 31, 1915.”

Why, at the time I subscribed for this stock, Mr. Sidebotham told me that Mr. Rae, then the State Treasurer, was a member of the company, and Mr. Alderson, and Ex-Governor Norris, and some other state officials that I don't recall at this time. If I remember correctly I believe he told me that Mr. Alderson was President of the company. I am not positive about that, though, whether he was or not. He told me at the time that they were not in a position to loan money, but that in a little while they would be in a position and would give me some money to loan on lands there. I never was appointed loan agent there, to my knowledge, until the other day in Court here, I heard the minutes being read, and I heard read that I had been appointed. I never was apprised of the fact by the company. I don't know whether my subscription was subsequently cancelled. They never told me it was. The notes were never returned to me.

Cross-Examination.

By JUDGE SMITH: I see now from my inspection of my subscription that it is marked “Cancelled,” under date of July 31, 1915.

Q. Oh, you observed that when you signed, being a lawyer, that this statement, “No agent or person has authority to vary the terms of this contract,” did you not?

A. I don't know that I paid very much attention to that at the time or not. I don't remember. I know that that was written in at the time on the

note or contract, I mean the written notation. I can't remember particularly about the other notation that you ask me about.

I notice that. It must have been there when I signed it.

~~Cross~~  
~~Direct~~ Examination.

By MR. KELLY: I notice like-wise now that that instrument is dated February 14, 1914. I think it was the date of its execution. My memory don't serve me quite correctly. Whether Mr. Sidebotham did say to me at that time that Mr. Alderson was president of the company, as I testified on direct examination, I wouldn't state positively as to that. I know that some time during the existence of the company. I don't remember whether he told me that or not. I couldn't state positively. I cannot swear wheher he told me he was so elected late in March of that year, was an inducement for my purchasing the stock. I couldn't say that it was. The only thing that was an inducement, I think, I thought the company was a good company because there were many prominent men in Montana connected with the company at that time. I don't remember who they were. I was practicing law at that time. Mr. Sidebotham told me that they expected to make loans through the country there in that vicinity, and that he would be glad to have me be the loan agent there, and told me that he thought I could earn commissions enough to pay my note in that way. That was my understanding, that the commissions would pay the note which I signed. I



did not make that a condition to my note.

Witness excused.

— — —

Whereupon Etta Thomas, a witness called and sworn on behalf of the Government, testified as follows:

Direct Examination.

By MR. WHEELER: My name is Etta Thomas. I reside at Avon, Montana. Have resided in Avon about thirty-two years. I am living on a ranch with my brother for the last three years. I know Mr. Sidebotham. Became acquainted with him in November, 1914. I had occasion to talk to him about stock in the Northwestern Trust Company. I don't know just the date. It was in November some time, 1914. I subscribed for twenty-five shares, at thirty dollars, but I got a discount of 5%, for cash, and gave a check on the Larabie Brothers bank, for seven hundred and twenty dollars, but I bought the first five shares in Deer Lodge and paid them \$150.00, and they came over to Avon and I bought the other 20 shares. I was boarding a couple of school-ma'ms. I don't know what representations were made to me with reference to the company, its earning power. He talked so much that I don't remember. He said that he would guarantee me from eight to thirty per cent on my money. Nothing was said as to when any dividends would be paid. Who was connected with the company he didn't say. Mr. Wilmot or Mr. Wills was with him. They said it was a loan and trust company, and to lend the

money out on real estate, you know, on farm land. There wasn't anything said as to why they were giving me a five per cent discount for cash. They represented to me that I was purchasing the company's stock. I don't remember whether or not this money that I paid for the stock was going into the company.

Cross-Examination.

By JUDGE SMITH: I did not understand at the time the company was in process of formation and that I was buying treasury stock. I do not recall now my subscription contract, whether it was with the Northwestern Trustee Company or with Sidebotham & Wilmot, the fiscal agents. That is my signature there. Mr. Sidebotham did a good deal of talking. Showed me a lot of literature, pamphlets, pictures, and one thing and another, and some receipts from other parties who had invested in the company. No, I don't think he did tell me how it was that he could give me a five per cent discount.

JUDGE SMITH: I offer Defendants' Exhibit 211 in evidence.

Whereupon Defendants' Exhibit 211 was received in evidence, without objection, and is in words and figures as follows, to-wit:

910

Exhibit 211 Deft.

NORTHWESTERN TRUSTEE CO.

Capital Stock \$500,000.00.

Sidebotham & Wilmot, Fiscal Agents.

Subscription for Capital Stock.

General Offices, reat Falls, Mont.

Subscription No. 5,155.

No. of Shares, 20.

\$600.00.

I, Miss Etta Thomas, do hereby subscribe to Sidebotham & Wilmot, Fiscal Agents, for Twenty shares of the capital stock of the Northwestern Trustee Company, and agree to pay therefor the sum of Thirty Dollars (\$30.00) per share, payable as follows: Cash, 600.00, as evidenced by promissory notes.

Stock certificates to be delivered when final payment is made, and I hereby agree that should I fail to pay said notes when due, or to make satisfactory arrangements for the payment of the same, that this subscription shall be void at the option of Sidebotham & Wilmot, and that I shall forfeit to Sidebotham & Wilmot any payments made thereof.

No agent or person whomsoever has authority to vary the terms of this contract or has the power to bind the Northwestern Trustee Company or Sidebotham & Wilmot by any statement or agreement other than herein set forth.

Dated at Avon, Mont., this 12 day of Nov., 1914.

Agent SIDEBOTHAM & WILLS.

(Signed) ETTA THOMAS.

(Written on margin.) "Sidebotham Option."

(Written across face of note.) "Make all checks and moneys Payable Sidebotham & Wilmot, Fiscal Agents."

"Northwestern Trustee Co.

PAID.

C

Nov. 16, 1914.

By ..... ”

He talked over with me what the company had in mind, what the objects of it were. He talked to me about two hours one afternoon, I guess, but then I don't remember just what he said. He said he would guarantee me eight per cent, and from eight per cent to thirty; but the balance was speculative. He thought he could say he would guarantee me eight per cent, and he thought he could pay thirty, that is that it would pay thirty, up to thirty.

Re-Direct Examination.

By MR. WHEELER: I couldn't say when I signed this subscription it was written across the end of it: "Sidebotham's option." I don't think there was anything said to me at the time I purchased stock that I was purchasing the stock of Mr. Sidebotham, that he had an option on from the company. I would recall it if there had been such a conversation.

Witness excused.

— — —

Whereupon A. E. Millard, a witness called and sworn on behalf of the Government, testified as follows:

Direct Examination.

By MR. WHEELER: My name is A. E. Millard. I live at Kensie, Montana. Am a rancher and stockman. Am acquainted with Mr. Sidebotham. First became acquainted with him about April, 1913.

Met him at my ranch. At that time Harry Wright was with him. I did talk to him about the Northwestern Trustee Company, and I subscribed for three hundred dollars' worth of stock. They were \$30.00 a share, that was six shares. Mr. Sidebotham promised me a loan on real estate, and on the condition that I would have to get the stock to get the loan, and he represented that it was a strong company, that the Governor was a stockholder, and that the Secretary of State and the Treasurer were stockholders and directors, Paris Gibson of Great Falls was a stockholder. Ninety-five per cent of the business men of Great Falls were stockholders, and he had a very wealthy man in Butte who was one of the stockholders, and an Italian. He said it would pay very large dividends, they would be over thirty per cent. I don't remember that he said that it had paid dividends or was going to in the future. He promised to make me a loan of six thousand dollars. The loan was never made. I endeavored to get the loan. It was refused. Exhibit 212 I cannot recall just now. My subscription was afterward cancelled.

Cross-Examination.

By JUDGE SMITH:

Why, I don't know, I don't understand much about capital stock and preferred stock. I understood that the company was selling its capital stock for the purpose of getting capital into its treasury, to carry out its objects; that was the idea. I didn't understand from anything Mr. Sidebotham told me



that it had already paid dividends. They were making loans. He spoke about the future prospects of the company. He also said to me that it would be necessary to have stockholders in our vicinity, so that they might appraise the land, if any applications were made for loans. My stock subscription, on account of the fact that I didn't get a loan, has been canceled.

Witness excused.

Whereupon Isabel Whitehill, a witness called and sworn on behalf of the Government, testified as follows:

Direct Examination.

By. Mr. Wheeler:

My name is Isabel Whitehill. I reside at Avon, Montana. I am acquainted with Mr. Sidebotham. I became acquainted with him November 11th, 1914. I purchased shares of stock in the Northwestern Trustee Company. Paid thirty dollars a share for five shares. The representations made by Mr. Sidebotham that induced me to purchase this stock were the names that he mentioned that I thought were very reliable. He mentioned Mr. Rae, and I think Mr. Norris and Mr. Alderson. I knew who they were. With reference to profits that I would have upon my investment, or what the dividends would be, he said that I would receive eight per cent on next August. This was in November. I do not think he stated what position Mr. Alderson and Mr. Rae held in the company. I don't think he had anything to say as to whether or not they made any

promises with reference to dividends in the future. I don't think that there were any other representations made at this time. I have paid for my stock. I paid right off, in cash.

Witness excused.

— — — — —

Whereupon Donald D. Arthur, a witness called and sworn on behalf of the Government, testified as follows:

Direct Examination.

By Mr. Wheeler:

My name is Donald Arthur. I am a certified public accountant. I reside in Butte, Montana. I have been engaged as a certified bank accountant about twenty-two years. Am acquainted with W. C. Rae, with Mr. Sidebotham and Mr. Wilmot. I have had occasion to go over the books of the Northwestern Trustee Company. I actually went over them in March, 1914. An actual engagement was from Mr. McVeay. I had prior, during and subsequent to that time, conversations with Mr. Sidebotham and Mr. Wilmot. First had a conversation with Mr. Sidebotham in October, 1913, with reference to the Northwestern Trustee Company, I believe Mr. McVeay had the position of manager of the company at the time I knew him. I made a report upon the Northwestern Trustee Company and the condition of the books. I don't remember, I think I mailed my report to Great Falls. I don't remember giving it to any individual. My recollection is that I mailed it to Mr. McVeay, in Great Falls. I don't

remember whether the conversation with Mr. Rae was regarding the work I had done, or future work. I did talk to him with reference to the auditing of the books. I talked to Mr. Rae over the long-distance telephone, between the 11th of March, which was the date at which my report ended, up to and the second of April, which is the date the report bears, sometime between these two dates I talked to him. That is my office copy of the report I made I furnished the original and two copies to the Northwestern Trustee Company, if I remember right. Exhibit 213 I have seen before. It is dated March 30th, 1914. I received it on April 1st, 1914. No, sir, I don't know whose signature that is at the bottom of the letter, of my own knowledge.

MR. WHEELER: We now offer in evidence Plaintiff's Exhibit No. 214, being the report of Donald Arthur. This is to show the financial condition of the company, and the report of Mr. Arthur. He examined the books prior to the time Mr. Alderson and Mr. Rae—

JUDGE SMITH: I object to it, as incompetent, irrelevant and immaterial. It doesn't serve to prove or illustrate any issue in this case; it has not been verified as correct, and it is a mere private document.

THE COURT: Well, if it is evidence against anybody, it may go in, regardless of whether it may affect all, and you will be protected by instructions, if the situation is such as to warrant such instruc-

tions, when the whole case is in. Let us hear if this report is correct or not.

I've had twenty-two years' experience as an accountant.

Q. What have you to say as to whether or not this shows correctly the conditions of the various operations of the Northwestern Trustee Company at the time that you made an examination of the books?

A. It shows correctly the amount of cash receipts by the company, the amount of cash disbursed by the condition of various notes that were submitted for inspection at the time of my report.

Q. And what have you to say as to whether or not you can, from an examination, using this for the purpose of refreshing your memory, state how much money was received on some of the stock that was sold upon option by the company?

JUDGE SMITH: I object to that, as irrelevant, and immaterial, and not calling for the best evidence, and involving his same testimony. According to the statement of the witness himself, he said, he made up from what somebody else has told him and from books that were not in Court.

THE COURT: Objection overruled.

Exception noted.

A. I can say that the cash shown on these sheets was received by the company. I believe the cash shown as having been received by the fiscal agent is also correctly stated.

Q. That is, one of the books of the company

showed at that time?

A. No, sir, the book—not the book, those figures were taken from the notes themselves.

Q. (By THE COURT): Was this compiled from the records and books of the company?

A. Partly from the books, and the notes themselves.

Q. The notes of the company?

A. The notes in their possession.

Q. Does it correctly set forth what you ascertained?

A. It does.

THE COURT: Objection overruled.

Exception noted.

THE COURT: These books are in Court and accessible?

MR. WHEELER: Yes.

THE COURT: Very well. Let the record show the fact.

Whereupon Plaintiff's Exhibit No. 214 was received in evidence, read to the jury, and is in words and figures as follows, to-wit:

(Here insert Ex. 214).

— — — — —

This was filed with the directors of the company.

JUDGE SMITH: I object to this narration of this witness' opinion.

THE COURT: It serves a purpose; it serves every purpose, this portion about their being inaccurate in the account between the Company and the agent, is a conclusion that this witness came to



from the books, but in itself it is not proof of the fact. If it is otherwise proven, it would serve then to show that notice of the fact was lodged with the company, where the directors and officers, having access to the books and the record, in the discharge of their duties as managers, we presume or it might not be presumed, that they discovered the facts from this report. Proceed.

Exception noted.

Page 7 of the report purports to be a statement in re note accepted by the company in lieu of cash on Bertoglio options, March 11, 1914. This is the list of the notes that the company accepted in place of cash, that the company was to receive for the Bertoglio option. As I remember the option there was to be a payment down of \$1,000.00, and payment of various sums of money at different dates, 90 days, 120 days, and so on, for quite a period of time, and the agreement called for the payment to the company in cash; in place of that the company accepted notes, from other people to whom stock was sold out of the Bertoglio option. Fifteen dollars was the price per share. Six hundred and twenty-five shares had been sold under the Bertoglio option at that time, at twenty dollars a share.

Q. Well, what commissions did the company allow for that option of Bertoglio? What did the fiscal agents get, if anything, upon that option?

A. I have a statement here, in connection with the particular notes, showing bonuses and commissions earned.

MR. LAMB: To this we object, for the reason that the contract between the fiscal agents, Sidebotham and Wilmot, show that they were entitled to receive on the sale of the stock of the Northwestern Trustee Company. This is calling for a conclusion of the witness. The contract is in evidence.

THE COURT: The contract might not be conclusive, though. However, the objection will be overruled.

Exception noted.

According to this statement here they received the difference between fifteen dollars and twenty dollars, and also a commission on the fifteen dollars. They received the commission on \$15.00, and in addition the difference between fifteen and twenty dollars, at which the stock was sold. At the time of my examination the company had received \$1,941.75 out of that 625 shares. The fiscal agents had retained \$1,275.00. On those particular items there was due \$9,283.25. There was due on bonuses \$935.75, and on commissions \$1,196.00. I mean by bonus, the difference between \$15.00 and \$20.00. I have spoken of them as a bonus in this report. I mean the difference between the price that it was optioned to Bertoglio and the price it was sold at.

Q. Now, out of that whole transaction, the sales of six hundred and twenty-five shares of stock on the Bertoglio option, how much money in all did the company receive,—would the company receive if all the notes were collected?

A. They would receive \$5,089.50.

Q. And how much would the party, the holder of the Bertoglio option, receive?

A. They would receive in addition to what I have already stated they had received, \$4,193.75.

Q. (BY THE COURT): Now, I don't know how you figure that out. You testified that there was \$9,283.25 due at that time?

A. Yes, sir.

Q. And which the agents were to get \$985.00 and \$1,186.00?

A. That was the balance uncollected, I said; that out of that the company would receive \$5,089.00, and the fiscal agents would receive \$4,193.00.

Q. As I say again, go back to your figures just before that; you said to be collected was \$9,000.00 and something?

A. Yes, sir.

Q. Of which the agents, you said, were to get a bonus of \$935.00 and commission of \$1,196.00?

A. I misunderstood you in that case. I said this heading here, Bonus and Commissions earned, on the other option requirement be met. That is my description of these two items, as I said before, \$935.00 and \$1,196.00. That is bonus and commission earned should other option requirements be met. I mean, take one item, if you care to. By taking the item of S. Harai, subscribed for ten shares at a figure of \$20.00 a share, \$200.00. He paid \$50.00 at the time, which has been retained by the fiscal agent, therefore there was still due the fiscal agent \$50.00, divided into a bonus of \$20.00 and a

commission \$30.00. In other words they received \$100.00 of this \$200.00. I stated that the company had actually received \$1,941.75; that the fiscal agents had retained in cash \$1,275.00; that there was still due a balance upon this 625 shares of stock that had been sold, the sum of \$9,283.25; and out of that the company would get \$5,089.50, and the fiscal agents or the parties who held the option \$4,193.00.

Q. Now, will you tell us, then, out of that total sale, what proportion the company would get out of the sale; how much the company would get out of the sale, including the cash that had already been paid in to the company, and the cash that had been paid the fiscal agents and was due each?

A. The company would get a total of \$7,031.25, and the owners of the option \$5,468.75.

Page 8 of the report shows the details of sale under the Coburn and Wilmot options up to March 11, 1914. Three hundred and twenty shares of stock were sold under the Wilmot option at the time I made my examination, for twenty dollars per share. The company actually received in cash \$4,215.00, and \$2,185.00 was retained by the fiscal agents. It was fully paid for, those 325 shares. They were entitled to \$15.00 a share, less commission, a total of \$3,800.00. The fiscal agents had received \$2,185.00. I would like to explain. This statement here shows that the cash received by the company and the cash received by the fiscal agents, and does not necessarily show the final accounts between the two. My report shows, it was for that reason I was unable to



make a complete statement, there was no final account, there was an open account between the company and the fiscal agents at all times, prior to March 11, and these figures only show the notes that the company — these figures only show the cash that the fiscal agents actually handled. My memory is clear as to what the option price was. I don't remember the rate of commission they were to get out, so that I cannot complete the figures for you.

Q. They were to get 25%. Now, can you figure, taking the 25% that they were to get on the sale of that option to Wilmot, and the bonus, can you figure how much the company would receive out of that three hundred and twenty-five shares, and how much the fiscal agents would get, or Wilmot?

A. The company would get \$3,600.00 and the fiscal agents would get \$2,800.00.

Two hundred and twenty-five shares were sold under the Coburn option. The company received in cash out of that \$2,475.00, \$1,575.00 was retained by the fiscal agents. On the Coburn option, with fifteen dollars, the company would receive \$2,531.75, and the fiscal agents \$1,968.75. At that time stock had been sold upon the other options, yes, sir. That was all the stock that was sold under the options at that time, as far as the record shows at that time. That is all of the option stock that had been sold so far as the records disclosed, under the three options, Bertoglio's option, the Coburn option and the Wilmot option.

I can tell you what the books show of thte assets



that the company had. They had each amounting to \$9,801.96. They had investments in real estate, as I remember it, which cost \$12,983.67. They had furniture and fixtures costing \$645.68. They had balance due on notes. Then the live assets of the company, outside of the notes, consisted of \$9,000.00 in cash, and the real estate and the office fixtures.

With reference to furnishing statements to the company monthly, there was such an arrangement proposed, the first time I met Mr. Wilmot and Mr. Sidebotham. They stated at the time of that meeting they desired a monthly verification of their assets and liabilities, for the purpose of advertising in a periodical of some kind, that they intended to issue each month. The arrangement was never completed. They didn't say to me why it was not completed. I had a conversation over the 'phone with Mr. Rae. I don't know that I in that conversation tell him of the conditions of the company, at that time. If my memory serves me, that the condition of the books was not satisfactory, and that it would be a good thing to have them re-written, put on a satisfactory basis.

Q. Did you say anything to him other than that, in connection with himself with the company?

A. I may possibly have done so, but I don't remember.

Q. To refresh your memory, I will ask if it is not a fact that you stated to Rae over the telephone, that by reason of the fact that the condition of the books was such that you wouldn't advise him to connect

himself with the company, or words to that effect?

MR. KELLY: Objected to, as leading and suggestive.

THE COURT: Yes, it is permissible, yes, but it is permissible when the occasion seems to require it, thus to suggest to the witness, for the purpose of refreshing his memory. It is sanctioned by the Supreme Court of the United States. The objection is overruled.

Exception noted.

A. I don't remember that I said anything that would indicate that.

It is quite likely that I told him that the affairs of the company were in a muddle and that a new set of books, and a different method along general lines, along legitimate lines, and a different manner of collecting money for stock sold, would have to be done before the company would hope to succeed. I recall having stated to him over the 'phone that the books were in a very unsatisfactory condition, from my point of view, and that I thought some changes would have to be made in order to get them in a satisfactory condition. At that time it was suggested by me as to having a meeting with him and Mr. Alderson, with reference to working out a satisfactory arrangement for the books. That meeting was never held. I did talk to Mr. Sidebotham in Butte, with reference to the condition of the books, after my report. I saw him several times. I don't remember the conversation. I don't think I did have any conversation with him with refer-

ence to the condition of the company before I made my investigation, or report. At that time I was doing all my business with Mr. McVey. May be that I met him and talked to him about it. If I did I undoubtedly told him that I didn't think the books were in very good shape. In my conversation over the 'phone, to Mr. Rae, with reference to the condition of the option, I don't remember saying anything about that.

Plaintiff's Exhibit 216 is a carbon copy of a letter I wrote to the President and Board of Directors of the Northwestern Trustee Company.

MR. WHEELER: We now offer in evidence Plaintiff's Exhibit 215.

JUDGE SMITH: Object to this, as incompetent, irrelevant and immaterial.

THE COURT: It has already been said that he spoke to some of them, to the Board of Directors. It simply corroborates what I have already been saying; that simply corroborates what has already been said. It probably brings it home more to the company than to the defendant Rae. You may introduce it if necessary.

Exception noted.

Whereupon Plaintiff's Exhibit 215 was received in evidence and is in words and figures as follows, to-wit:

Exhibit 215 Plff.

November 25th, 1913.

To President and Board of Directors,  
Northwestern Trustee Company,

Great Falls, Montana.

Dear Sirs:

In response to the request of your Fiscal Agents acting in accordance with a resolution embodied in the Minutes of your Company, I visited Great Falls, looked over the records of your Company, determined that considerable improvement in the method of accounting in use could be made and that a rearrangement of accounts was necessary and reported accordingly. I informed your Mr. Wilmot that I had to make a trip into Idaho but would advise him of my return in case you desired me to put the suggested improvements into effect. In order to expedite matters I spoke to Mr. Wilmot over the long distance telephone after my return but, unfortunately, the wire was in such a condition that I could not hear plainly what Mr. Wilmot had to say. I gathered, however, that he was under the impression that my letter indicated that the present condition of your records was satisfactory and, consequently, my services would not be required. I have reread my letter and must say that I would not get that impression from it. Perhaps if you will also read the letter over again you will come to a different conclusion than that indicated by Mr. Wilmot.

I shall be glad to hear of your intentions in this matter at an early date so that I can make my plans accordingly.

Yours very truly,

DA/AL.

D. A.



Thereupon the following stipulation was duly made and entered:

STIPULATION.

It is hereby stipulated and agreed by and between the plaintiff and all of the defendants now on trial in the cause entitled United States of America, versus A. M. Alderson, etal, that at all times from the 26th day of December, 1912, up to the date of the filing of the indictment in said cause, the Northwestern Trustee Company was and now is a corporation organized and existing under and pursuant to the laws of the state of Montana, having an authorized capital stock of the par value of five hundred thousand dollars (\$500,000.00), divided into fifty thousand (50,000) shares, each of the par value of ten dollars (\$10.00), and that the articles of incorporation of the Northwestern Trustee Company as copied on the first four pages of the plaintiff's Exhibit No. 1 in said cause is a fully, true and correct copy of the articles of incorporation of the said Northwestern Trustee Company.

Q. In this conversation that you had over the telephone with Mr. Rae, Mr. Arthur, for the purpose of refreshing your memory, I will ask you if it is not a fact that you in that conversation stated to Mr. Rae that you thought it advisable for him to keep out of the company?

A. I cannot say that I said so in such words, positively, Mr. Wheeler, not in that sense at all. My recollection of the conversation is that the matters we were talking about were as to the prepara-



tion of my report. I was at that time engaged in getting my report out, and I think Mr. Rae called me over the long distance, and asked me when it would be ready. I told him I was having some difficulty in getting this report out, and particularly in regard to making a statement of the condition of the company. He said that the important thing was to get my report so that it would be a clearance for Mr. Grogan, who was at that time retiring from the office of treasurer, as I remember it. He said that it was not particularly necessary that I should go into the financial condition of the company, and that what they desired was a statement which would show the condition of Mr. Grogan's account. As to any other conversations I am not very clear, Mr. Wheeler. I think we had one conversation about the condition of the company. I believe I said in effect to Mr. Rae that I didn't consider it a very good institution at that time. I have known Mr. Rae for quite a long time.

#### CROSS EXAMINATION.

BY KELLY:

This report that I made on the second day of April, 1914, that is simply a partial report of the conditions of the Northwestern Trustee Company at that time. In addition to this being a partial report, I state that no effort was made to prepare a balance sheet which would show the company's financial condition. There is in this report no balance sheet showing the company's financial condition at that time. I show by my report the cash on

hand. On page two it shows cash in bank at that date was \$9,801.96. In addition to the cash on hand, the company had investments in real estate and so forth. That investment account shows the assets of the company; total, \$12,983.67. My report likewise shows the balance due on notes receivable at that time to the company.

The notes receivable were \$75,220.75, that is the total balance due on notes receivable, totaling the cash on hand, the real estate, and other investments of the company, and the balance due on notes receivable to the company, adding the furniture and fixtures, \$645.58, making a total of \$98,651.96. I don't think there is any other item of asset now that is not included in that. That would be the book value or face value of the assets of the company, as they appeared on the books on the 11th day of March, 1911. There is a difference between book value and face value. The difference depends upon the nature of the assets. This seventy-five thousand dollars would be the face value of the notes. The twelve thousand dollar item would be the book value of the real estate, or investments. It was the cost of that real estate. I gave you the total. And from the date of my report I can tell the court and jury approximately the date of my telephone conversation with Mr. Rae. The date of the letter is April 4th. It was a few days prior to the date of the letter.

It would be my best judgment from observing this letter now, and from the fact that my report

is dated on the second day of April, that my conversation with Mr. Rae was just a few days before I wrote this letter. And about the time that I made my report. I imagine it was either a day or two before the day of my report. That would be either the last day of March, or the first day of April, around that time.

I knew at that time, Mr. Rae had already become a member of the board of directors, and was elected treasurer of the company, but had not taken over the affairs of treasurer from Mr. Grogan, and was awaiting my report for that purpose. So that my conversation was not prior to the time that he had been elected a director of the company, and not prior to the time that he had been elected treasurer of the company, but, I believe between the time of his election and the time of his assuming the duties of his office as treasurer.

I presume he had already qualified and assumed the office of the director of the company, but I don't know as to that. In that conversation I told Mr. Rae that the books of the company were in bad shape. I told him it was a very difficult matter for me to make a financial report, or for any one else, without having the books re-written, as I remember it.

I think my correspondence shows that I recommended to him and Mr. Alderson, and to the other members of the company, that they would have to have the books of the company re-written at that

time. I do not know whether or not they did. I haven't examined the books since.

### CROSS EXAMINATION.

By MR. McCONNELL:

That report shows the makers of those notes; it shows the subscribers for stock during the period that it covers, that is, it shows the subscribers by name. This report covers up to March 11th, 1914.

### CROSS EXAMINATION.

By JUDGE SMITH:

The testimony I have given here is confined entirely to what I found on the books. I don't know anything about money in the bank, that don't appear on the books. I prepared the list of stockholders from the notes themselves. I probably did go to the stock book and make use of it. I don't know the book when I see it. I don't remember having examined this book. I ascertained the stock outstanding, as I remember, if I remember rightly, from the stock record itself, the certificate book. This says subscribed stock, stock ledger. I probably did make use of the journal, but it was only in an incidental way. I don't know as I did make use of the stock certificate books; I made use of all four of the books, possibly, but it was from the certificates themselves that I took my observations as to what stock was outstanding at that time.

It was admitted by all parties that all of these books are the books of the company, and that they are in evidence.



## Re-Direct Examination.

By MR. WHEELER:

As I stated before, it was exceedingly difficult to find out the condition of certain accounts, and for that reason, I couldn't make a full report at that time. I made no effort to prepare a balance sheet, because all of the information was not available. By that I mean, for instance, I couldn't get an agreement between the account of the Northwestern Trustee Company, and the accounts of Sidebotham and Wilmot, fiscal agents. I couldn't tell what the correct difference between the two was.

Q. Now, you referred to page two of your report here and stated that on page two it showed that there was nine thousand eight hundred and some odd dollars in cash?

A. I found that was \$9,801.96 in cash. These other items on account of subscription sales, per statements on pages four and five, \$19,050.00 is the cash received, \$19,050.00 by the company on that particular item, subscription sales.

Q. What do you mean, subscription sales? Was that subscriptions for the treasury stock itself?

MR. KELLY: To which we object, if the court please, because it is apparent from this record that this company never had any treasury stock.

By THE COURT: Objection overruled.

By MR. KELLY: Exception noted.

A. The money that the company received in account of subscriptions to stock.

Q. Subscriptions to this treasury stock, or sub-



scriptions to stock that had been optioned, and segregated to various directors and officers of the company?

A. That item refers to direct subscriptions to stock.

Q. Directly to the company?

A. Yes, sir. Notes receivable \$75,200.00 and some odd dollars is the item on page 7, the item on page eight added together. Balance due is on page 5. That was the balance due on subscription notes. I don't remember how the notes read now. There was a large proportion of that seventy-six thousand dollars that I have given that according to the contract that had been entered into by the company, or Sidebotham and Wilmot, some of the other directors, officers of the company, that belonged to them. There was a proportion, I don't know whether it was large, or not, without going into it. That proportion would be the difference between the price at which the stock was optioned off by the company to Sidebotham and to Bertoglio and Coburn, and the selling price plus also the per cent that would be allowed to Sidebotham and Wilmot for having sold the stock, or having it optioned off. It would be that less the amount that they had received.

I don't want the jury to understand that there was seventy-six thousand dollars due the company itself at that time, in notes receivable. That was just the balance due on the notes receivable, is all it was, it was the balance due on notes receivable at that time, whether they were due to Sidebotham

and Wilmot, Bertoglio or Coburn, or any one else, that had no bearing on it, this was the balance due on notes receivable, it was subject to any amounts that might have been due to Sidebotham and Wilmot, or from Sidebotham and Wilmot, which account, I told you, I couldn't straighten out at that time. Going to make up this seventy-six thousand dollars that I have told about as notes due and unpaid, was included the notes due of five thousand dollars from A. M. Alderson, and the note of two thousand five hundred dollars from W. C. Rae. They were included in the figures that I have given you as assets.

I included only the portions of the options that were represented by balances due on sales made out of these options. I didn't also include these contracts or options by these parties, because I don't know whether they were of value, or not. I wouldn't say I didn't consider them assets of the company, exactly, I didn't know what value to attach to them, consequently I left them out. I also included in that the note given by McConahay and Atkinson, the unpaid portion of it.

Twenty-four hundred dollars had been received by the fiscal agents, Sidebotham and Wilmot. I cannot tell how they had been received—it was either in cash or notes. I cannot tell from my figuring, now, sir, whether or not it was received from the sale of some of the stock that was subscribed for by McConahay and Atkinson at that time. The twenty-four hundred dollars, that had been paid in,

or the twenty-four hundred dollars on that McConahay and Atkinson note had all been received by the fiscal agents.

Q. Was there any way that you could tell what proportion of cash that had been taken in was kept by the agent, and was turned over to the company?

A. Now, in this set of columns here, it shows that of that twenty-four hundred dollars, twenty-one hundred and fifty dollars was received by them by notes and two hundred and fifty dollars in cash, I said a moment ago that I could not tell, but I can. The two hundred and fifty dollars was received in cash, and twenty-one hundred and fifty dollars in notes. And that all went to the fiscal agents, also in the \$76,000 that I have mentioned, I also include a note given by C. A. Rainwater, one of the defendants in this case, and that note was for fifteen hundred dollars, the balance at that time being twelve hundred dollars. I also include in that another note of C. A. Rainwater for \$945.00 or a balance.

#### RE-CROSS EXAMINATION.

By JUDGE CALLOWAY:

I did not make any note of stock that was transferred from a subscriber to somebody else who purchased from him, a subscriber.

#### RE-CROSS EXAMINATION.

By MR. KELLY:

Q. You do not want the jury to understand from your testimony, Mr. Arthur, that these books show all, or that you ascertained from your examination that any part of these assets, whether they be notes

receivable, or otherwise, was owing from the company to Sidebotham and Wilmot, the fiscal agents?

A. Why, what I understood by that was this: That there was an open account between the fiscal agents and the company at all times, and that I couldn't ascertain what the correct amount of that balance was. That balance might affect the assets one way or the other.

Q. You don't want the jury to understand that the company owed Sidebotham and Wilmot on the balance, but that the balance might be one way, or the other?

A. That is all, I didn't know what it was, at the time.

#### RE-CROSS EXAMINATION.

By JUDGE SMITH:

If it should turn out that the Rainwater note was afterwards fully paid, I should say it was properly in that account as an asset.

By JUDGE SMITH: I move to strike the testimony, in reference to the Rainwater note, out of the testimony—out of the record.

THE COURT: Motion denied.

Exception noted to both of the court's rulings.

#### RE-DIRECT EXAMINATION.

By MR. WHEELER:

It is a fact that I could from the books of the company tell that Sidebotham and Wilmot did have an equity in that seventy-six thousand dollars and the report so shows. I had access to all of the books, files and records of the Northwestern Trus-

tee Company, also of the fiscal agents. I did see them. At that time this report was as correct as an expert accountant could make it.

Witness excused.

Whereupon F. S. Tripp, a witness called and sworn on behalf of the Government, testified as follows:

### DIRECT EXAMINATION.

By MR. WHEELER:

My name is F. S. Tripp. I am acquainted with Mr. W. W. White. I reside at Eureka, Montana. I am a laborer. I had occasion to purchase ten shares stock in the Northwestern Trustee Company at twenty dollars (\$20.00) per share, which I paid for. Mr. White was alone when I bought my stock. Why, he said the affair of the company was to get long loan mortgages, first mortgages, and they were to place mortgages in eastern banks and get money at 4% and 8% I think he said, I don't exactly remember now, but anyway, the way he figured it out the company was to gain advances in this state. Why, he said that my dividends would be paid, but that owing to, but as to the amount of the dividends, he said they would guarantee at least 8%, and that my dividends would start the following January, sometime in January. I don't remember the exact date; but it was some time in January, 1913. Yes sir, I believe it was in January some time; I don't remember exactly what date it was. My first payment was due in February, 1914, if I am not mistaken.



I have seen that paper before. That is the subscription for that note which I gave. Using that note for the purpose of refreshing my memory, Mr. Tripp, I will state that the date that I purchased the stock was December 15th, 1913. My dividends were supposed to start the first of the year 1914. Mr. White was there with reference to the Northwestern Trustee Company, and I don't just remember the month it was, but about the time the second payment was due, Mr. White and Mr. Rainwater were there at Eureka. There wasn't anything said about purchasing my stock. There was a misunderstanding between me and the company.

Q. The first time they were to see you, did Mr. Rainwater and Mr. White say anything to you, or what was said, if anything, with reference to the price of the stock per share at that time?

A. I don't remember that there was anything said in regard to the price of the stock, or that there was anything said as to whether it had increased in value or not. There were quite a number of parties who had stock in it, but I don't remember who they were outside of Mr. Boorman. I know Mrs. Davie Cornell. She was not present during the conversation between Mr. White and Mr. Rainwater and myself, but Mr. White, Mr. Rainwater and myself had a conversation the following February, I believe it was the February after I had bought my stock. And that conversation related to the Northwestern Trustee Company.

Q. You may state what that conversation was?

A. Why, as I understand it, that was the same as myself, the same as I was told when the purchase of my stock was made, and that was that the coupon would buy our stock back at any time. Mrs. Cornell wanted to sell her stock and they wouldn't take it. She did offer to sell it to them.

Q. She offered to sell it for?

By JUDGE SMITH: That is objected to as incompetent, irrelevant and immaterial. Any dealings of this company or any of these Defendants with Mrs. Cornell would be incompetent, irrelevant and immaterial.

By THE COURT: Objection overruled.

Exception noted.

A. She had ten shares of stock for sale and she had bought five shares for her son, Roy Cornell, and she offered to sell it for \$150.00. I don't believe there was anything said to her at that time with reference to what the stock was selling for.

#### CROSS EXAMINATION.

By JUDGE SMITH:

Q. Mr. Tripp, who was present at this last conversation that you speak of?

A. Why, Mr. and Mrs. Cornell and Mr. White, I don't know whether Mr. Rainwater was there or not: I couldn't say.

#### CROSS EXAMINATION.

By MR. McCONNELL:

Q. Mr. Tripp, at the time that Mr. White sold you this stock and told you, as you have testified, that you would receive dividends to the extent of

8% on the first of the following January, January 1, 1914, and for a period of six weeks from the time he sold you stock, you don't mean that you expected to receive dividends on the stock at that time, do you, of 8%?

A. At that time?

Q. You didn't understand that on the first day of January, 1914, you would receive dividends of 8% on your stock?

A. My dividend was to start, I say, beginning—I was to become a stockholder the first of the year.

Q. You mean that your stock would commence earning dividends the first of the year, is that what he told you?

A. That is what he said.

Q. Isn't this what he told you, that by the first of the year the company would commence to loan money and carry mortgage loans and that from that time on the money invested in the company would commence to earn money or dividends, is that what he told you?

A. He told me that the company would start loaning money on the first of the year, and my dividends would start also at the same time.

Q. At the time the company commenced to loan money and to earn money, that is what he said, isn't it?

A. Yes.

Q. I will ask you further in regard to this matter of the earning of 8%, if Mr. White didn't tell you that like the companies throughout the United

States that were earning about that much money, about 8%, that the company would be earning that much?

A. I don't remember of his speaking of any other company, although he referred to this—I don't remember his speaking of any other companies. I don't remember, although he referred—I don't know where the company is located, either at Port—no Shoemaker.

Q. I will ask you if it is not a fact that Mr. White, in connection with this conversation, at the time you used the word guarantee, you meant that by that he told you your stock would earn 8%?

A. He didn't say anything about that. He said he would guarantee 8%—at least 8%.

Q. He didn't say that he would?

A. That they would guarantee at least 8%.

Q. Who did you understand him to mean by them?

A. Really I don't know unless it was the company.

Q. That is what I am getting at. From whom did you think you were buying the stock, not Mr. White, but from this company, and that your investment would earn 8%?

A. Yes sir.

Q. What is the condition of your subscription at the present time?

A. It is paid up.

Witness excused.

Whereupon J. C. Wiggins, called and sworn as



a witness on behalf of the Government, testified as follows:

DIRECT EXAMINATION.

By MR. WHEELER.

My name is J. C. Wiggins. I reside near Pray, Montana. I have met Mr. J. C. Wilmot. I met him first on the road between my home and Emigrant. I am a rancher. I had occasion to purchase stock in the Northwestern Trustee Company as Mr. Wilmot stopped me on the road, introduced himself and told me his business. I bought ten shares at thirty dollars (\$30.00) a share. I think that was in September. Some time in September, 1914.

Q. What, if any representations did he make to you with reference to the Northwestern Trustee Company, as to who was back of it or interested in it, and what dividends, if any, they were paying or were going to pay?

A. He referred me to a number of the head men of the state. Well, Mr. Alderson was one and I don't remember the others, but some of the head men of the state. He said that they had stock in the company and that it was a sure and safe investment. That those people wouldn't be in it if it wasn't all right absolutely. Well, Mr. Wilmot told me that they had been paying dividends at 8% during the past year, and he said this year it would pay 15% or better, I guarantee it; he says you will get your interest semi-annually.

He said quite a good deal, but I can't remember just what it was. He talked to me quite a good deal.



Well, I should say somewhere in the neighborhood of three quarters of an hour, or an hour.

### CROSS EXAMINATION.

By JUDGE SMITH:

Mr. Wilmot told me who he was. He told me he was one of the fiscal agents of the Northwestern Trustee Company. I don't remember as to him telling me the name of his partner, Mr. Sidebotham. I don't think he showed me any literature, any pamphlets, circulars or anything of that kind. I don't remember whether he talked to me about other investments, of other corporations in other parts of the country that had made successes at this kind of business.

I think I understood that I was subscribing to the capital stock of the Northwestern Trustee Company, and that the money was to be used in carrying on project for which the company was organized. That was the proposition to be carried out in the future. I couldn't tell exactly that he told me what the company hoped to accomplish. I don't know that I could state anything further in that respect, only that he thought it would increase probably 30% in time to come. He did tell me that the dividends to be paid by the company would probably increase as the company enlarged its operations and got to going in good shape.

Witness excused.

Whereupon Ellis Rodden, a witness called and sworn on behalf of the Government, testified as follows:

## DIRECT EXAMINATION.

By MR. MURPHY:

My name is Ellis Rodden. I live at Chitsikah, Alaska. I know the defendant, R. R. Sidebotham. I met him, I believe, two or three times. I undoubtedly met him once in Great Falls. I met him once at Chitsikah in Alaska. At the time I was in Great Falls I was working in the Smelter. I did not have a great deal of conversation or talk with the defendant Sidebotham, when I was with him in Great Falls.

Not a great deal. Well, there was one Mr. Miller come to see me and said he wanted to collect some notes, and he then called me up again and asked me to meet him down town. Then he took me over to see Mr. Sidebotham. I don't remember very well what conversation I did have with him. They had a note they wanted to collect, and he was going to give me the over due interest, for collecting it, Mr. Miller explained to me that they couldn't very well collect them for the company because they were shareholders. I do not remember what note they wanted me to collect. I don't think they ever turned over any note to me to collect. I do not remember the Mullery note.

I am pretty sure Exhibit No. 220 that is my signature at the bottom. I signed one or two letters at the office a few days later than the time I met Mr. Sidebotham. I have forgotten who was present when I signed this letter. I just stepped in as I was going down to supper on a telephone call. I

think I did see Mr. Sidebotham there at that time the letter was prepared or written out when I went in. I just stopped and signed it and I didn't wait at all. I did not read the letter at that time. I understood though it was in regard to a note. The note was never turned over to me.

I never did buy or purchase from Sidebotham and Wilmot any notes or from the Northwestern Trustee Company.

MR. MURPHY: I offer Plaintiff's Exhibit 220 in evidence.

JUDGE SMITH: Objected to if your Honor please, I cannot see any relevancy to it at all. Object to it as incompetent, irrelevant and immaterial, and endeavor to object something in here for the purpose of merely prejudicing one of the defendants. It is a collateral matter.

THE COURT: I think not, I think not. This party to whom the letter is addressed stated that his note was represented to him to have been sold to Mr. Rodden. This man said he never bought it. It will not tend to prejudice, it will throw light on the transaction to determine whether the scheme charged in the indictment is proven or not. Objection will be overruled.

JUDGE SMITH: Exception noted.

Whereupon Plaintiff's Exhibit 220 was received in evidence, read to the jury, and is in words and figures as follows, to-wit:

“Great Falls, Montana, February 12, 1914.  
Mr. Geo. W. Mulry,

St. Ignatius, Montana.

Dear Sir:

Some time ago I purchased from the fiscal agents of the Northwestern Trustee Company your note for \$900.00, dated January 12, 1914. I would have written you sooner in regard to this note, but Mr. Sidebotham told me that he had a letter from you recently stating you would remit within a week, which time has long passed.

This letter will serve as a notice to you that I now hold said note and demand the payment of \$900.00 principle and \$5.00 interest to date 8%. You will add additional interest to this at 8% from this date until the day you post the remittance at St. Ignatius.

Thanking you for prompt attention to the obligation, I am,

Yours very truly,

ELLIS RODDEN. P. O. 476."

Q. Mr. Roden, did you ever hire any representative to collect this note, or any other note?

A. I never had any use for a lawyer. I do not know Mr. Alfred Hordskoff of Great Falls. I never hire him to do any legal business for me. I stated that I saw Mr. Sidebotham at Chitsikah, Alaska. I reckon it was last April, I wouldn't state for certain.

Q. Did you have any talk with Mr. Sidebotham then about the Northwestern Trustee Company, or any note?

A. He said the company was in trouble, I don't

know just how he worded it, something to that effect. Well, let's see, it was in regard to that collection of that note that he was speaking about. I suppose that is the note. The \$900.00 Mulery note, that is the name of the man. That agreement, you know, for the overdue interest, he wanted me to give him that contract, and that was all the agreement. I had an agreement with him. I entered into the agreement with him, that would be just before that letter you showed me. He didn't say much about wanting me to give him the contract in Alaska. He wanted me to give it to him, that's all. I forget if he said why he wanted me to give it to him. I really don't remember now. I did not give him the contract. Yes, there was a request of me to make an affidavit at that time.

He had a letter for me to copy, and I copied it. He has the copy. I forget now what it was in that letter. He did me a copy for me to make my copy from. I copied it off the way he prepared it. Why, he said he wanted to give it to his lawyer, I think, I wouldn't say for certain, but that is as near as I can remember. I never got nothing on any interest on notes that were collected. I wasn't paid anything. I am a laboring man in Chitsikah, Alaska.

#### CROSS EXAMINATION.

By JUDGE SMITH:

I left Alaska about a week ago, or a little more. Yes I was subpoenaed by the Marshal from Chitsikah. A little more than a week ago. About a week or ten days ago. Let's see, it was the 13th that I



was subpoenaed. I had known Miller for a long time, I couldn't say how long.

In a way he was a friend of mine. I never heard of his working in the smelter. I worked for the smelter for years. I don't remember how many times I did see Sidebotham. I don't imagine I was him more than two or three times, I don't know, I don't know for certain, I met him in the hallway here, and I didn't know him.

Q. And Miller is the man who approached you with this proposition?

A. He came down to where I was working. He wanted to put the Mulery note in my name, or to use my name to collect the Mulery note, something of that kind. I don't just remember that he told me that Mulery owed the note and that he was refusing to pay it. He said they wanted to use my name for collecting the note. I was to get the overdue interest on the note. He told me that they had endeavored to collect from Mulery and could not. I wouldn't say that he said that.

Q. Did you learn anything in relation to the reason that those notes that they thought it necessary to put the note into the hands of an alleged innocent purchaser?

A. He explained like that, that the company couldn't very well sue the stockholders. That is the way I understand it. He said he wanted to collect in my name.

Q. I say, did you in any of these conversations, get any impression, I don't suppose you can re-

member the exact language, which lead you to believe that they wanted to accomplish anything more than to compel Mulery to pay his note that he had given. Wasn't that the object of it?

A. The only thing I understood they wanted to collect in my name.

Q. Now, are you sure. I want you to be sure of this, if you know, one way or the other, that you ever saw the note?

A. I don't reckon that I did.

Q. Would you say positively that you never did?

A. I never saw it to my knowledge, to my memory.

Q. Isn't it a fact that that first night, I think it was, you said it was in the night, at any rate, the first time when you signed this paper that they actually showed you the note Mr. Rodden, or showed you a note. Can you tell us positively, if you cannot just say so, if you can, I would like to know it, whether they didn't show you a note at that time.

A. I just went in and signed that paper, I was on my way to supper.

Q. Mr. Rodden, did you understand from your friend Miller that he had an interest in the commission that was due on that note?

A. I knew he said something to do there with the company, but what I didn't know.

Q. Did he tell you he had a commission in that note; and wanted you to help him get that commission, that he sold the stock?

A. I knew that he was working—he was work-

ing for a commission, I heard him say that, but about that I wouldn't say.

Q. When Miller first approached you about it, he was approaching you—he purported to be acting in some matter that he had an interest in himself, did he not; he wanted you to help him out?

A. I know once he came to me and saw me, then he took me to Sidebotham.

Q. You understood that you were helping Miller out, did you not?

A. I understood that I was to get the over due interest and it was perfectly legal. He said it was all right, the company couldn't sue the shareholders or stockholders.

Q. That, as you understood, it was the reason of trying to collect it in your name?

A. Yes, that was the reason. Mr. Miller told me that it was perfectly legal. I don't know a thing about law. I wouldn't say for certain whether Miller told me that he had a commission coming out of the proceeds of that note, and that was one reason, to sue and collect it.

Q. Now, when Mr. Sidebotham came up to Alaska, how did he appear, calm, collected, or excited, or how? Did he tell you he had been arrested in connection with the so-called Mulery note?

A. He said he had been kind of under arrest, I think he said he was under bail, I couldn't say for certain.

Q. Did he tell you how much bail he was under?

A. I forget.

Q. Well, Mr. Rodden, you will answer now as positively as you can, take time to refresh your memory, what was Sidebotham's appearance when he came to you as to whether he was calm, collected, business like, or excited or what?

By MR. WHEELER: I don't know how it can make any difference as to how he appeared. We object to it as improper cross examination.

THE COURT: I think so, objection sustained.

Exception noted.

He did tell me that he had been arrested by the U. S. authorities in connection with this matter. He told me that it was in relation to this Mulery note. He said that there was—that that note was in trouble too.

He had a letter for me to copy. And I copied it. I don't remember if he told me that he was acting under the advice of W. F. O'Leary, his attorney in Great Falls. I don't remember if there was a young lady stenographer in the office at Great Falls when I signed Exhibit 220. I don't remember who was there. I got a telephone call, and just stopped in at supper. I am pretty sure that Mr. Sidebotham was not there. I would not say for sure if Mr. Sidebotham was there present when I signed; I don't think he was.

Q. Wouldn't you say there was a young lady? Do you know Miss Husking, that is the young lady sitting there, that lady with the glasses on?

A. I don't know whether I did or not.

Q. Can you see her?

A. I can see her.

Q. Do you recollect ever seeing her before.

A. I think there was a lady there, but I don't know the names of them. Mr. Miller was present at this interview up in Alaska.

RE-DIRECT EXAMINATION.

By MR. MURPHY:

CROSS EXAMINATION.

By MR. GALEN:

Q. I understood you to say that your arrangements were for the collection of the Mulery note, was made with Mr. Miller.

A. He was the one that came to see me, and later some other day, later on, he called me up to take me down town, and he took me to Mr. Sidebotham's.

Q. What was the conversation that you had with Mr. Sidebotham concerning the matter?

A. Well, he explained it to me the same as Mr. Miller did, I believe.

Q. Then as I understand you, you then had a conversation with respect to the collection of the Mulery note with Mr. Sidebotham in the presence of Miller?

A. He took me over, he met me, it was through Mr. Miller that I met Mr. Sidebotham in regard to the note, he just explained to me before I signed, Mr. Sidebotham and Mr. Miller did. It was before I met Mr. Sidebotham that Mr. Miller explained it to me. I think it was a few days before that letter



I first met Mr. Sidebotham.

Q. Plaintiff's Exhibit 220, the same being the letter which was handed to me by Mr. Murphy. That is quite a while ago, I cannot just remember what Mr. Sidebotham said to me on that occasion. The first of it was made by Mr. Miller, then I met Mr. Sidebotham later, and I don't know what, we finished the agreement, that was it. When I met Mr. Sidebotham, Mr. Miller was with him. I suppose everybody talked. I cannot say it was Mr. Miller that explained to Sidebotham the arrangement made with me. I couldn't say just what the conversation was. Mr. Sidebotham must have had a conversation with me at that time respecting the collection of the Mulery note. Well, Mr. Miller called me up and told me to meet him so that we could see Mr. Sidebotham, that is all I remember. I met Mr. Miller by request to go over to the office to see Mr. Sidebotham in their office. Mr. Miller explained to me that they wanted to collect a note in my name. I couldn't say what Mr. Sidebotham was doing when I went to the office in company with Mr. Miller. I don't remember if he was busy on the books. I was introduced to him.

#### CROSS EXAMINATION.

By JUDGE SMITH:

Defendant's Exhibit No. 221 is my signature. I copied the body of that.

#### RE-DIRECT EXAMINATION.

By MR. MURPHY:

That is the letter I copied at Alaska.

Q. At the request of Mr. Sidebotham?

By JUDGE SMITH: I object to this as improper re-direct examination. I simply had him identify his signature.

By MR. WHEELER: He asked him who wrote it.

By JUDGE SMITH: I asked him in whose handwriting the body was.

THE COURT: It is only to further identify it, to make sure. I think they have the right to ask him. I think it has already been answered, but the objection will be overruled.

Exception noted.

By JUDGE SMITH: Your Honor will recall that he volunteered the statement, that was the letter that he copied.

THE COURT: I know that. They are seeking to identify the letter.

By JUDGE SMITH: We offered this letter in evidence subject to explanation by this witness, but I don't know whether he will or not.

THE COURT: The objection has been overruled, you can take an exception.

Q. At the request of Mr. Sidebotham?

A. Yes, sir.

Q. When you were at the office the night you went with Mr. Miller, and met Mr. Sidebotham, did you, at that time enter a written agreement?

A. Yes sir.

Whereupon Robert M. Houston, a witness called

and sworn on behalf of the Government, testified as follows:

DIRECT EXAMINATION.

By MR. WHEELER:

My name is Robert M. Houston. I am an expert accountant in the employment of the Department of Justice. I have been engaged in the work of accounting and bookkeeping about nine years. During those nine years I was auditor of the Union National Bank of Columbus, Ohio, or, probably for four years. I was in the Treasury Department of the United States Government in the Insolvency Division for about three years. I have been in the Department of Justice since. And since I have been in the Department of Justice I have been making investigations of books and records of various companies for the purpose of ascertaining whether or not there was any violation of the Federal statutes. I had occasion to visit the city of Great Falls. I was in Great Falls twice, once in November of 1915, and once in the early part of 1916, January the eighth. I had occasion to examine the books of the Northwestern Trustee Company. I received the books from the offices of the Company in the Ford Building. If I remember correctly, Miss Cort and Mr. Sidebotham were both present when I got the books. And they were turned over to me as being the books of the Northwestern Trustee Company. I have seen some of those books here in court; all of the company. There was the two ledgers, and the daybooks or journals, and the stock registers. My

examination of the books was made during the month of January, February and March of 1916. I made a correct examination of those books and a correct report upon the same. I examined the company's affairs from the time of the organization of the company down to the 31st day of December, 1915. The company was organized December of 1912.

Q. Can you tell us from the examination of the books how much stock of the company, if any was given to the organizers of the company?

A. There was five shares of stock given to each one of the incorporators of the company; charged on the books of the company as organization expense. \$250.00. Mr. Sidebotham got five shares of it. Nothing was ever paid for this stock. According to the books options were granted on the stock by the company. There were ten thousand shares optioned to Mr. Wilmot at fifteen dollars a share; there was twenty-five hundred shares on the books optioned to Frary and Burlingame; there was twenty-five shares optioned to Mr. Sidebotham at ten dollars a share; there was ten thousand shares optioned to Mr. Bertoglio at fifteen dollars a share; there was fifteen hundred shares optioned to Mr. Louis Haven at ten dollars a share, and there was an option to Mr. Coburn, I think it was, thirteen hundred and some odd shares, thirteen hundred and thirty-four shares that was optioned to Mr. Coburn.

Whereupon the hearing was continued until 2 P. M.

Whereupon Governor S. V. Stewart, a witness called and sworn on behalf of the Government, testified as follows:

Direct Examination.

By MR. WHEELER:

My name is Samuel V. Stewart. I am the Governor of the State of Montana. I am acquainted with Robert Sidebotham. I first met him about four years ago in the State Capital in this city. I had occasion to have a conversation with him, with reference to the Northwestern Trustee Company. I never became an investor or a stockholder in the company.

My recollection is that Mr. Sidebotham came to see me first during the session of the Legislature, in the early part of 1913, either January or February. At that time he had letters from Governor Hawley of Idaho, Former Governor Hawley and the then Governor Haynes, which he showed to me. I talked to him about the matter, and he told me what he was going to do, and asked me to subscribe for some of the stock. I told him I had no money to invest, and did not subscribe. He came in once or twice after that, and talked to me. I have forgotten the date, but along during the spring, and on the 5th of May, as I recall, from a copy of a letter I have here, came into the office and said to me that the company was going to be a good proposition, and that he was very anxious that I should be associated with them in that company. I said, well, I haven't any money to invest, and I don't care to



go into it. He said, "I have fixed it so that you can get in. I have an option here on a number of shares, it was fifty shares of the stock of the company at \$20.00, which would be a thousand dollars, and, he said, you can take this option, and go in whenever you want to by paying for the stock. I discussed the matter with him somewhat and looked at the option. I said, all right, if I want to go in I will take up the option. He then took from his pocket a certificate of stock and said "You can pin this certificate right to the option and keep them together, until you take it up." I demurred at that and told him that I didn't think the stock ought to be in my possession, that I could get it when I took it up, and he said, it is all right, it is my stock, and I have paid for it. It is a matter between you and me, and not between you and the company, and you can leave the stock right with the option. So he went out. When he went out I looked the certificate over and I saw that the stock had been issued directed to me from the company, and I didn't want it to stand that way exactly, because it put me in the position of being a stockholder, if anything happened to me. I took the certificate and turned it over to endorse it, and I think, in blank, and called Mr. Aitken, who was then and is now my private secretary, into the office, and called his attention to the fact that the stock was left with me but was not mine, and asked him to witness my signature, which he did. The stock was laid aside, that was on May 5th. I went East on the Reclama-

tion Project, and to the Governors' Convention in Salt Lake, paid no more attention to it, until along in the summer, when something called my attention to the fact that my name was being run in the advertisement for the company, as an investor and stockholder of the company. I then saw Mr. John F. Davies, who was in some wise connection with the company, I don't recall, and sent the stock back to them by him, to the Secretary of the Company, at that time I wrote a letter, dated July 31st, in which I instructed the company to see that my name was taken off their books. Plaintiff's Exhibit is the original letter, of which I have a copy in my hands.

By MR. WHEELER: We now offer in evidence Plaintiff's Exhibit 221.

Whereupon said letter was received in evidence, marked Plaintiff's Exhibit 221, and is in words and figures, as follows, to-wit:

Executive Office, Helena, Montana.

July 31, 1913.

Mr. Robert R. Sidebotham,  
Great Falls, Montana.

Dear Sir:

Today I am sending to the Secretary of the Northwestern Trustee Company, certificate No. 18, for fifty shares of the stock of the said company, which said stock you issued to me on May 5, and which I that day assigned to you.

I am directing the secretary to issue a new certificate direct to you. That being the case, the

proxy, which I gave you some time since, should be destroyed and not presented at the annual meeting.

My reason for taking this action is that I do not care to be placed in a false light with the public of Montana.

Yours very truly,

(Signed) S. V. STEWART.

I afterwards had a conversation with Mr. Sidebotham, he saw me on the train, I believe, I am not sure as to that, I think though it was on the train, though it might possibly have been in my office. He came to me and expressed regret at my having sent the stock back to him and wanted me to go into the company, and remain with it, and I told him that I didn't care to, and that ended the matter.

Cross-Examination.

By JUDGE SMITH:

Q. Governor, just to clear up this matter, wasn't the par value the selling price, ten dollars a share, at that time, fifty shares at ten dollars?

A. I wouldn't say positively that, but my recollection was that the agreement made, that the aggregate amount that I had to pay to get the certificate was one thousand dollars, but I might be mistaken.

My recollection was that it was a thousand dollars that I had to pay under my option. Mr. Sidebotham did not frankly tell me that he would like to have me as a stockholder, so that my name might be advanced as a stockholder in the company; not

at the time, nor at any time. At the last conversation after I had sent this back, he insisted then that he would like to have me associated with them. At the first conversation, if it had been told to me that my name was to be advertised as a stockholder, I never would have done it.

Witness excused.

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Whereupon Mr. Houston was recalled for further direct examination.

By MR. WHEELER:

To tell what was sold on these options, I can show you on the books where it is all worked out in total there, and it will be much easier. There were eleven hundred and twenty-three and a third shares sold on Bertoglio's options. At twenty dollars per share. There were nine hundred and forty shares under the Wilmot option at twenty dollars a share, and fifteen shares under the same option at thirty dollars a share. There were eleven hundred and eighty-five shares sold under the Sidebotham option at twenty dollars a share; there was five hundred and two shares sold at thirty dollars a share, there was seventy-five shares sold under the Haven option for twenty dollars per share, and seventy-five shares sold for thirty dollars a share. There were a hundred and fifty-four shares sold under the Meyers option for twenty dollars a share, and eighty-four shares sold thirty dollars per share. There were six hundred and fifty-five shares sold under the Coburn option for twenty dollars a share,



and forty shares sold for forty. The Frary and Burlingame option was cancelled according to the books, and no stock sold. I have not got the item right there showing the date of the cancellation. Under the Bertoglio option, the company would receive net eleven dollars and a half per share. The company would receive on the Sidebotham option according to the terms of the contract seven dollars and a half per share. And out of the Wilmot option eleven dollars and a half. Seven dollars and a half per share went into the company when stock was sold under the Haven option. As to how much would have gone into the company, of all of the ten dollar options, according to my construction of the contract, the company would receive net seven dollars and a half, and all of the fifteen dollar option, the company received net eleven dollars and a half. I cannot tell how much actually go into the company under these options. The payments that were made, there was a great many of the payments on the options that were made by notes, and some made by cash, I cannot tell you the respective options, but I can tell you the amount that was paid in on the options in total. There was fourteen thousand and fifty-nine dollars and twelve cents cash paid in on all of the options, and then they took notes that were afterwards paid, amounting to \$13,289. Well, the fiscal agents would get the difference between the amount net to the company, the selling price on each and every sale. The value of the assets of the company at the time of the or-



ganization of the company was nothing. And immediately after the company was organized, it had no assets. They had no liability at that time, only on the stock issued. And how much stock was issued at that time for which nothing was paid. There was two hundred twenty-five shares of stock issued to the organizers, and then there was the twenty-five hundred shares of stock issued to Mr. Sidebotham as advance expense, those were the first transactions in the disposing of the stock. The selling price of the stock was increased from ten to fifteen dollars per share, on May 6th, 1913. The assets of the company at that time the stock increased from ten to fifteen dollars per share was nothing. At the time the stock was increased from fifteen to twenty dollars per share, they had subscriptions unpaid to the amount of fourteen thousand five hundred and seventeen dollars fifty cents; they had notes unpaid that had been given for stock amounting to \$77,207; they had options outstanding amount to \$415,940.25. They owned real estate amounting to \$7,000; they had cash in hand, \$7,137.50, making a total asset of \$531,802.25. I speak of assets, include everything as shown on the books. Several of the parties taking the options made a cash payment according to the books, of twenty-five dollars. Nothing else was ever paid by the parties who took the options on the stock. Only as the stock would be sold, the proceeds of the sale would be applied upon the payment of the option, to the company. For instance, if they sold ten

shares of stock to somebody, that would apply on the option. Now, that was the value of the stock at the time the stock was raised from ten to fifteen dollars a share.

By MR. KELLY: Just a moment, we object to that as calling for a conclusion of the witness.

By THE COURT: I think the evidence shows that they had no assets.

By MR. WHEELER: I just want to follow it up.

By THE COURT: The court will withdraw its remarks, and see what an expert has to say about it.

Noted exception it had no value. At the time the price of the stock was raised from fifteen to twenty dollars per share, the book value of the stock. Taking their statement of conditions dated August 31, 1913, the month when the stock was raised, their books showed the stock to have had an apparent value of ten dollars and thirty-five cents per share. The value that I fixed it at is forty-seven cents.

Now, in arriving at that, the exact figure, in arriving at the value was four dollars and twenty-seven cents. In arriving at the value of four dollars and twenty-seven cents at the time the stock was raised from fifteen to twenty dollars. I cancelled all subscriptions unpaid, all of the notes, and all of the options as assets, and then I cancelled the capital stock subscribed, but not paid for, as a liability, cancelled the unpaid commissions to the fiscal agency, and computed the value of the capital

stock actually issued on the absolute liquid assets the real estate and cash. So that to figure four dollars and twenty-seven cents, I figured the liquid assets of the company. That would be 3,305 shares. And in making up the figures at ten dollars that I took per share, I included in the assets of the company, all of the options that had been granted.

Mr. Rae's was an unpaid subscription appearing on the books, and Mr. Alderson's was a note. I included both those. That was computed on the capital stock issued on 3,305 shares, then the capital stock subscribed and optional off, but not paid for, amounting to \$38,351 shares. I cannot say whether the McConahay and Atkinson note been given at that time, I am not familiar with the date. The stock was raised from twenty to thirty dollars per share, in September of 1914. The company had at that time accounts receivable for four hundred and twenty-three dollars. The liquid assets of the company were cash, \$4,588.28, furniture and fixtures, \$791.50; real estate, \$15,392; mortgages, \$9,500, and collateral notes, I included those of \$270. September 30th, 1914.

That raise was from twenty to thirty dollars. The value of the stock at the time it was raised from twenty to thirty dollars per share, based upon the liquid assets of the company, was five dollars and ninety-seven cents, the book value was \$12.14. By book value I include in that all the assets. The assets that I speak of. In included in the options, and the unpaid subscriptions, and the unpaid notes

given in payment for stock. I included in that the note that was given by Mr. Alderson for \$5,000, and the subscription of Mr. Rae for \$2,500.00. Also included among the assets was the subscription of McConahay and Atkinson.

Q. And what have you to say, as to whether or not, you included, in making up those figures, the note given by Rainwater?

A. I am not familiar with the date of that, without referring to the record, but if the note had been given at that time, I included it, I included every note without questioning any. The number of shares I am basing values on is five thousand and sixty-two and a half, that is, forty-five dollars and 97 cent value, then in arriving at the book value of \$12.14, I included the six thousand seven hundred and forty shares that have been subscribed but not paid for, and twenty-five thousand nine hundred and thirty-six and a half shares that had been optioned but not paid for, the various options that I have mentioned previously were never taken up, or paid for entirely. They were afterwards canceled, February, 1915. At the time of the cancellations of these options in February, 1915, the percentage that was allowed the fiscal agents was increased from 25% commission to 33 1/3%. It had absolutely no effect on the financial standing of the company.

The contract was entered into in February, a new contract, increasing the commission provided for an increase in commissions on all previous sales, so



the commissions, the increase of 8 1-3% was computed on all of the sales of the Treasury stock prior to this time, and it amounted to \$7,682.08, that amount was then credited to the account of the fiscal agents on the books of the Northwestern Trustee Company; computed the amount of commissions due on the options classifying all of the options at the same as if it had been Treasury stock, that is, account for the entire selling price of the options, that amounted to \$21,437.99, that was credited to the account of the fiscal agents. They figured out a percentage upon all of the option stock that had been sold, and gave themselves a credit at that time of \$27,430.00.

These two amounts credited to the account increased the balance due the fiscal agents on the books of the Northwestern Trustee Company to \$43,440.07, it was then computed that the premium or profit that had been derived from the sale of the option stock was \$42,377.50. That was the amount that the fiscal agency had received over and above the amount paid to the company, the stock had been sold on the option for \$42,000.00 more than was accounted for to the company, at the time the sale was made. So this amount of \$42,000.00 was then charged to the account of the fiscal agency on the books of the Northwestern Trustee Company. Leaving a balance due them of \$1,062.57.

At the time of the cancellation of the options by the Directors of the Company, no cash ever paid into the company by the fiscal agents, in connection



with the cancellation nothing was turned back by the fiscal agents to the company at all.

I made my examination as of December 31st, the books were written down to that date, I began my examinations January 8th to 9th, somewhere around in there. They had cash in the banks at that time amounting to \$16,216.38. The book value of the stock, at that date, December 31st, 1915, was \$11.89. And that is based upon the 7,087 shares of stock actually issued, 7,305 shares of stock subscribed for but unpaid. Yes, there were some partial payments on the notes. In making up that amount of \$11.89 per share for stock on December 31, 1913. I included all of the notes that were outstanding and that included all of the notes given by McConahay and Atkinson. In the meantime the note given by Alderson had been cancelled and returned to Mr. Alderson, the subscription was canceled. Eliminating the outstanding notes the live assets of the company at the time that I made the examination, December 31, 1915, consisted of cash in banks of \$16,216.38; mortgages, \$18,913.00; mortgage certificates, \$14,250.00; Furniture and Fixtures, \$1,334.53; Real Estate, \$15,329.22; Certificates of Deposit, \$2,646.20, and due from Sidebotham \$50.00, making a total of \$68,739.33.

Based upon the live assets of the company, taking into consideration the amount of stock issued at that time the value of the stock was \$8.73, that is based on 7,847 shares. I discussed a great many of the notes with Mr. Sidebotham, more in total than

any particular note. I remember one particular conversation with Mr. Sidebotham, I asked about the different suits that had been filed by the company on different notes, why some notes were sued and others were not. I think there was something said particularly, with reference to the Rainwater note. I think I asked why that note had not been sued on, and was told they couldn't collect anything on it if they did. I think the McConahay and Atkinson note was mentioned. I think that the McConahay & Atkinson note was the one that the remark was made about that I just referred to instead of the Rainwater note. Considering only the stock, for which the company had received payment before, and the stock certificates actually delivered 7,847 shares of stock was actually issued. How much of that was Treasury stock and how much option stock?

The stock sold, was the amount that was actually sold straight from the Treasury stock, was 2,050 $\frac{1}{2}$  shares under the Sidebotham option; there were 950 shares. He has read all that before. The portion of the stock given to the fiscal agents in payment of commissions was 2,958 shares. Taking into consideration, both the stock issued and the stock subscribed, the total number of shares disposed of by the company was 15,152, represented by this stock in dollars was \$281,395.00. From ten to fifteen, twenty and thirty dollars per share. The company never paid a dividend and was not in a position to. The expenses of the company excluding the premi-

um on the stock, and excluding the commissions, and simply taking into condition the earnings and expenses, the expenses exceeded the earnings to the amount of \$6,092.47. That is for the total time down to December 31, 1915.

The company never had any earned surplus, dividends were paid or declared by the company. The subscription of Mr. Rae was canceled. The stock transaction of Gus DeCelles for 167 shares was Mr. Sidebotham's personal stock, at the time it was purchased by Gus DeCelles. Mr. Burgess bought Mr. Sidebotham's stock. The books of the company show Mr. Bertoglio had five hundred shares of stock in one block, that I know of, that five hundred shares of stock of Bertoglio's was Mr. Sidebotham's personal stock. And the books of the Company show Mr. Speer was the owner of some of the stock of the company. Five shares of that stock came from Mr. Sidebotham's personal stock. I think that was all the stock that Mr. Speer had of this company, five shares. Plaintiff's Exhibit 152, options, contracts, notes receivable and cash, the sales have amounted to over \$585,000.00. How much stock had been sold at that time outside of the options? I could not say I have not made any computation on that, but I can. It included at that time all of the options that were outstanding. It so states there. The notes of McRae and Clouston, of \$510.00 were carried as outstanding. Plaintiff's Exhibit 8, Black's note for \$1,005.00 was also, Edwin L. Norris' note for \$510.00. That is a subscription, not a

note. That was carried among the assets of the company. The note of Ralph E. Reed, Exhibit 11, for \$1,500.00 was also, William Duncan for \$1,500.00, Exhibit 14. Exhibit 15, J. J. Ives, \$6,000.00 was also, as was note of McConahay & Atkinson, \$15,000.00. The Broadwater note which was to be paid for some commission, was carried as an asset of the company, while it was in possession of the company it was afterward cancelled. I do not know what stock Mr. Manley bought, I have not figured it out yet. I think I can tell that Isabelle Manley, I cannot, without going into the books to find out. I could take a look at the books and find out.

#### Cross Examination.

By MR. KELLY:

When the options were all canceled and the fiscal agents put on a basis of 33 1/3% for the sale of all stock, that being 5% that was given in the first instance, to Mr. Sidebotham on his original contract, and 28 1/3% to be paid over all other shares sold. In that settlement all of the sales that had been made up to that date were checked and settlements made with fiscal agents on a basis of 33 1/3%. A commission was received by the fiscal agents on all the sales made from the institution of the company down to December 31, 1915, except the \$10.00 stock, there was no commission paid on the \$10.00 stock.

Q. And on all of the stock sold upon which commissions were paid at all, it averaged 33 1/3%.

A. It would be 5%, plus 38.



Q. Plus 38 1/3%?

A. Plus 38 1/3%.

Q. That is 33 1/3%?

A. Yes, sir.

On that settlement the matter was adjusted from the beginning of the organization down to that date on that basis, and as the books now stand, and the company now stands, the agents have received 33 1/3% on all stock sold, based upon the price for which it was sold. There was 33 1/3% that was arrived at on all stock sold. So that, as the company stood then at that time, the options being all canceled, and all of the stock had been sold or subscribed for, and placed back in the Treasury, on a basis of 33 1/3% to the fiscal agents.

Auditing, these are the expenses, \$387.55; collection expense, \$449.07; Court fee account, \$307.15; General Expense \$3,767.90; Legal Expense \$2,298.85; Organization Expense \$250.00; Rent \$945; Salaries \$4,080.50; Traveling Expense \$986.85; Furniture and Fixtures \$21.75. Now, the earnings from the Northern Insurance Company \$8.00. Interest and Discount outstanding \$47.78.

Q. Now then, on March 18th, or about that time, or for the time between March 18, we will put it, 1914, and the date of your account, can you tell me whether or not the earnings of the company exceeded the expense for that period?

A. I have not computed that, but I can if you want it.

Q. You have gone all over these accounts and



know all the items of expense, salaries paid, etc.

A. Yes, I have got a great many of them.

Q. Commissions paid as shown by the books?

A. Yes sir.

Q. I will ask you whether or not, Mr. Rae or Mr. Alderson ever received a dollar from the company by way of salary, commission on stock, or otherwise?

A. No. They did in this way. They received no salary, or commission, but if my memory is correct, there were one or two occasions when their expenses were paid to Great Falls to attend Directors Meetings.

They received their expenses from Helena to Great Falls when they went over there to attend meeting of the Board of Directors. Other than that did they never received a nickle from the company.

Q. Referring to the Exhibit No. 152, wherein the statement is made that options, contracts, notes receivable, sales, and cash have amounted to over \$585,000.00, is that correct?

A. I cannot answer that question one way or the other without going into the books, as of that date, I haven't seen that statement until shown to me here.

Q. You gave us a statement there from your report, showing that one date they in options, contracts, sales, stocks sold, etc. \$521,000.00 and something on the books? Isn't that true?

A. Had assets of \$521,000.00 in which options, notes, and subscriptions were included. In addition

to that there was cash and real estate.

Q. In other words, if you include the options among these assets of the company, they total more than \$500,000.00?

A. Yes sir.

Cross examination.

BY JUDGE CALLOWAY:

I stated when I was asked on direct examination that Mr. Speer had five shares and I didn't know whether he had any other or not, I had forgotten at the time, but can refer to the books and find out. Now, I don't know whether he had the thirty shares or not, the stock ledger would show what these were, this appears to be a stock certificate for thirty shares. I presume it is a fact, that Mr. Speer, never had any options of any sort. Nor any subscriptions of any sort I believe not. The books of the company do not show that Mr. Speer ever received any commissions on any sales of any kind. No sir. And neither do they show that he drew any salary of any sort.

Cross Examination.

BY MR. KELLY.

Q. The books likewise show that neither Mr. Rae nor Mr. Alderson ever sold or had sold a share of stock belonging to them either that they had subscribed for or that they owned?

A. No sir.

Re-Direct Examination.

BY MR. WHEELER:

Q. How many shares of stock were actually is-

sued? and paid for according to the books to either Mr. Alderson or Mr. Rae?

A. One share each.

I do not know whether they received any compensation or commission from anybody, excepting the company. Their stock was canceled, when their subscription was canceled, in August, 1915. The price of the stock was raised from \$10.00 to \$20.00 and from twenty to thirty in September of 1914. At the time the price of the stock was raised from \$20.00 to \$30.00 a share Mr. Rae didn't have any option. He had a subscription for 250 shares of stock at \$10.00 per share, a \$2500.00 subscription. Mr. Alderson had given a note in payment for 500 shares of stock at \$10 a share, a total of \$5000.00.

BY MR. KELLY: I want, if the Court please, to ask the witness to determine, if he will, the relation of the receipts and expenses, the earnings and the expenses of the company from March 18, 1914 until the date of his report, if you will get that for us. Showing the relation of the earnings of the company to the expenses for that period.

Witness excused.

Whereupon BESSIE HOSKING, a witness called and sworn on behalf of the Government, testified as follows:

#### DIRECT EXAMINATION

BY MR. MURPHY:

Plaintiff's Exhibit 22. I saw some that looked like these, in the office of the Northwestern Trustee Company while I was there. Yes, sir, I saw it.

During the course of my employment for Sidebotham and Wilmot, I assisted in mailing our some letters and advertising matter, but those large circulars, we didn't mail out, that I remember. They were given agents, or expressed to them in bundles.

Plaintiff's Exhibit 23 were given to the agents and bundles by Sidebotham and Wilmot. Plaintiff's Exhibit 23 contains my signature on the bottom of that and also Mr. Sidebotham's and Mr. Wilmot's and Mr. Wills.

Plaintiff's Exhibit 24, contains the signature of M. A. Cort.

Exhibit 25, contains the signature of M. A. Cort.

I am familiar with the stationery and letterheads printed by the Northwestern Trustee Company and Plaintiff's Exhibit 25, and Exhibit 26, are letterheads of the Northwestern Trustee Company and the signature attached to 26 is M. A. Cort's. I am not positive as to the exact date Miss Cort came to work for the company but it was about the middle of April, 1914. She worked there as book-keeper for them until the following August, and then she was made Secretary and Book-keeper up until last fall, I wouldn't say just what time. She was assistant Secretary and Treasurer up to the time I left Sidebotham and Wilmot's employ. I left the employment of Sidebotham and Wilmot April 1, 1916.

Plaintiff's Exhibit 27 is letterhead of the Northwestern Trustee Company and M. A. Cort's signature is on it. No. 28 is stationery of the Northwest-

ern Trustee Company, and M. A. Cort's signature. No. 29 is stationery of the Northwestern Trustee Company and M. A. Cort's signature. No. 30—Northwestern Trustee Company stationery and M. A. Cort's signature. Exhibit 31 is Sidebotham and Wilmot's stationery and the signature at the bottom is Mr. Sidebotham per my initial. No. 32 is stationery of the Northwestern Trustee Company and M. A. Court's signature. No. 33 is the same.

BY JUDGE SMITH: I am willing to admit that any place where their signatures appear, that it is the genuine signature.

BY THE COURT: Let the record show the admission.

BY MR. MURPHY: I would like to have her explain some of them.

BY THE COURT: Very well, proceed.

Plaintiff's Exhibit 35, is stationery of the Northwestern Trustee Company signed by W. C. Rae, rubber stamp signature. I saw some like the circular letter you show me in the office of the Northwestern Trustee Company. That letter, Number Thirty-five is not very familiar to me, I don't recall the letter. Number 36 is Sidebotham and Wilmot's and my signature. Number Thirty-seven is Northwestern Trustee Company with Mr. J. W. Speer's signature with my initial. I don't remember at whose dictation I wrote that or signed it. I don't recall who gave me instructions to sign that, permission to sign that. I saw some letters in the office of the Northwestern Trustee Company that looked



like that. They were mailed to the stockholders and the subscribers and in mailing those circulars to the stockholders and subscribers, I don't recall that, whether all stockholders were included. In the practice of mailing letters to subscribers and stockholders we always tried to include all persons who owned stock, and that included Mr. Alderson and Mr. Rae, and Mr. Spear. We had a mailing list, and if their names were on the list, why, they were included.

Exhibit 38 is on the Northwestern Trustee's Company letterhead and signed Sidebotham and Wilmot by me. I saw that letter in the office, some like this, I don't remember this particular one, altho I must admit it because it has my name on it. Letters like Number 38 were mailed out to the stockholders and subscribers by Sidebotham and Wilmot. Well, I don't know who took it to the post-office, but I presume I helped to fold them and to get them ready for mailing. Well, Just as to the person, I cannot think at whose orders I got them ready for mailing but it was my orders in the office, Sidebotham's and Wilmot's, I was the stenographer for them.

Exhibit 39 is upon Sidebotham's and Wilmot's letterhead, and if there is a signature, it is of Robert R. Sidebotham. I would say from the letter that I did the typewriting of it.

No. 41 is the Northwestern Trustee Company's stationery and it is signed by Robert R. Sidebotham and No. 42 is Sidebotham's and Wilmot's stationery,

signed by Robert R. Sidebotham. I recall haveing seen that letter, or one like it in the offices of Sidebotham and Wilmot, or in the office of the Northwestern Trustee Company. As I recall it, they were sent to real estate agents, and people like that, you know, that would have the handling of loans and mortgages. I did assist in sending those out in that manner.

Exhibit Number 43 is on the Northwestern Trustee Company's stationery and signed by Robert R. Sidebotham. I typewrote it, dictated from Mr. Sidebotham.

Number 44—Mr. Sidebotham and Mr. Wilmot's stationery and Robert R. Sidebotham's signature. Mr. Sidebotham dictated it to me. And Number 45 is Sidebotham's and Wilmot's stationery signed by Mr. Sidebotham. It was dictated by Mr. Sidebotham to me. And Number 46 is Sidebotham's and Wilmot's stationery, signed by Mr. Sidebotham and dictated to me. Number 47—Northwestern Trustee Company's stationery and M. A. Cort's signature. And Number 48 is Northwestern Trustee Company's stationery and M. A. Cort's signature. Number 49 is Northwestern Trustee Company's stationery and M. A. Cort's signature. I don't just remember that latter; I probably saw one like it in the office of the Northwestern Trustee Company. I may have assisted in sending it out, I wouldn't be sure about that now. It is signed by M. A. Cort. Number 50 is Northwestern Trustee Company's stationery, J. W. Spear's signature, per the initial C. It look like

Miss Cort's writing. You showed me one like this with Mr. Speer's signature per my initial. Number 51 is written on Northwestern Trustee Company stationery and is M. A. Cort's signature. Number 52 is Northwestern trustee Company per M. A. Cort's signature and Number 53 is Northwestern Trustee Company per Mr. Wilmot's signature. Number 54 is Northwestern Trustee Company, signed by Sidebotham and Wilmot by Mr. Wilmot. Number 55 was written on Sidebotham's and Wilmot's paper, signed A. M. Alderson by C.

Referring to Exhibit 55, I saw that or circulars like it in the office of the Northwestern Trustee Company. Well, I believe those circulars that I saw in the office were mailed out to the stockholders and subscribers. I assisted in the preparation of those for mailing. When I speak of the office, I mean the office of the Northwestern Trustee Company and Sidebotham and Wilmot. They were taken to the post-office after they were prepared for mailing. It was mailed from the post-office, from Northwestern Trustee Company and Sidebotham office. I took it or Miss Cort took it, or we had somebody there to help us take it.

Exhibit 56 is on stationery of Sidebotham and Wilmot by J. G. Wilmot. Mr. Wilmot dictated it to me and it was transcribed by me. Those letters that I have testified that were dictated to me and then typewritten by me and signed by the persons I have mentioned, the exhibits heretofore mentioned, were prepared for the mail and deposited at the post

office of the the United States at Great Falls by myself.

Plaintiff's Exhibit 161—I am not sure about that, I never helped to mail or to send out anything like it.

Plaintiff's Exhibit No. 63, I recognize it. We had some cards like that. Those cards were mailed with a circular that I mentioned a few minutes ago, to the stockholders and subscribers.

Exhibit No. 64 is a Northwestern Trustee Company's envelope. That is the size and kind of envelope they used.

Exhibit 65, Yes Sir, I have seen some like it in the office of the Northwestern Trustee Company. I did assist in sending those out. They were sent out from the office—they were mailed out, by Sidebotham, to these stockholders and subscribers.

Exhibit 67. I have seen some like these—saw them in the office of the Northwestern Trustee Company. I would say that some copies were mailed, and the others given to the agents. I did assist in the mailing of some like 67. They were mailed to the stockholders and subscribers. No. 68 is a Northwestern Trustee Company envelope. Now I know it was addressed on Sidebotham and Wilmot's typewriter but I don't know who did it.

Plaintiff's Exhibit No. 69. I have seen a circular letter of that nature and kind in the office of the Northwestern Trustee Company. It bears, at the bottom, the signature of A. M. Alderson per the initial C. The circulars of that kind that I have seen



in the office were mailed out to the stockholders and subscribers.

Exhibit 70, I have seen such a circular letter in the office. It bears on the bottom facsimile of Wm. C. Rae. Well, we sent that circular to the agents, and mailed them to the stockholders and subscribers.

No. 71. I have seen some like them in the office bearing a facsimile of A. M. Alderson. Circulars of that kind were mailed to some of the agents and stockholders and subscribers.

No. 72.—I have seen a similar one to that in the office. We mailed them and gave them to the agents; mailed those that were signed by Fay D. Young to the stockholders and subscribers.

No. 73 is a Sidebotham and Wilmot envelope. I would say from the address on it that I addressed it.

No. 74 I have seen that or a similar one in the office of the Northwestern Trustee Company and have assisted in sending those out in the mail to the subscribers and stockholders and some were given to the agents to take out.

No. 75—I have seen some like it in the office of the Northwestern Trustee Company. They were mailed and and some given to the agents; mailed to the stockholders and subscribers. It bears facsimile signature of the G. Bertoglio signature.

No. 76, I have seen similar ones in the office of the Northwestern Trustee Company. Some were mailed and some were given to the agents.

No. 77 is a Northwestern Trustee Company envelope and No. 78 I have seen in the office of the



Northwestern Trustee Company. Some were mailed, and some were given to the agents; mailed to the stockholders and subscribers. Nos. 79 and 80, I have seen circulars similar to those in the office of the Northwestern Trustee Company. They were mailed out to the stockholders and subscribers.

Plaintiff's Exhibit Nos. 81 and 82 are Northwestern Trustee Company envelopes.

No. 83 I have similar one to that in the office of the Northwestern Trustee Company. As I remember these, they were put up in booklets and expressed out.

No. 84, I have seen a paper similar to that in the office of the Northwestern Trustee Company, we put these in circular booklets like the others. They were expressed out, as I remember it to the agents. I was not in the employ of the company, December 16th, 1916.

Exhibit 90, I have seen some that looked like these in the office. They were given to the agents, or expressed to them.

Q. Were any of the booklets like No. 90 sent out by the United States mail that you know of?

A. Well, I wouldn't say as to that, there might be one of two copies, but we didn't make a practice of doing that.

I know Mr. W. W. White. I have seen his handwriting, I don't know if I could identify it for sure. I couldn't say that I did ever see him write.

Exhibit 91, is signed by W. W. White. I wouldn't swear to the signature, because I am not

familiar enough to do that.

No. 97 is an envelope of the Northwestern Trustee Company. And No. 98, I have seen circulars or letters similar to that in the office signed Sidebotham and Wilmot by J. Hoskins. I am J. Hoskings. Those circulars that were in the office, similar to that were mailed out to the stockholders and subscribers.

No. 99, I recognize. I have seen them in the office of the Northwestern Trustee Company. These accompanied that letter I have just identified, No. 98 and were sent out through the United States mail with it.

Exhibit 100 is on a letter-head of Sidebotham and Wilmot. Mr. Wilmot's signature is at the bottom. I didn't write it, I was on a vacation at that time.

No. 101 is Sidebotham and Wilmot's envelope.

Exhibit 102 is on Sidebotham and Wilmot's stationery, signed by Sidebotham & Wilmot, per my name. I would say who dictated it that I phrased that myself. It was my orders to send out my collection notices and I would say that was one of them. I received such orders from Sidebotham and Wilmot.

Exhibits 104 and 105 is stationery of the Northwestern Trustee Company signed by myself. 105 is a Northwestern Trustee Company envelope signed by M. A. Cort.

Exhibit 111 is an envelope of the Northwestern Trustee Company.

Exhibit 112, I recognize that. It is written on

Northwestern Trustee Company stationery signed by Robert R. Sidebotham. I will say that I type-wrote it. Then I went through the regular course of the mails, deposited in the United States mail.

No. 113, I have seen letters or circulars similar to that in the office. They were mailed to the stockholders and subscribers. Well, I wouldn't say that I did assist, they were mailed out with paid up stock. I seen them prepared to send out by Cort.

No. 115, I recognize that envelope as Sidebotham and Wilmot's.

No. 119 and 120. I recognize 119 as being a portion of an envelope of the Northwestern Trustee Company. It was addressed on my machine, Sidebotham and Wilmot's machine.

Plaintiff's Exhibit 120, I have seen circulars similar to that in the office. It is Mr. A. M. Alderson's signature per the initials C. I would say that Miss Cort signed that. From the office of the Northwestern Trustee Company they were mailed to the stockholders and subscribers. I did assist in the mailing to stockholders and subscribers of the circulars.

No. 121, I have seen some circulars like that in the office of the Northwestern Trustee Company. They were mailed to the stockholders and subscribers. I did assist in such mailing.

No. 122, I have seen circulars like that in the office of the Northwestern Trustee Company. I don't remember about those, what was done with

those. I don't remember the mailing of those. That is a Northwestern Company envelope.

Ex. 127, I have seen circulars like that in the Northwestern Trustee Company office. Some were mailed and some fixed up and sent out to the agents, and mailed to the stockholders and subscribers.

Exhibit 128, I have seen circulars of this kind in Sidebotham & Wilmot's office. They were fixed with booklets and sent out to the agents. They were in the office of Sidebotham and Wilmot, and in the office of the Northwestern Trustee Company and sent out by Sidebotham and Wilmot. I fixed them up and sent them. They were expressed, those booklets. I wouldn't say as to any being sent out in the mail, there might have been one or two copies, but we didn't make a practice of sending those to stockholders and subscribers.

Plaintiff's Exhibit 129, I have seen a paper like that in the office of Sidebotham and Wilmot. These were fixed up in those booklets for the agents. They were expressed out in bundles.

Exhibit 130 is a Northwestern Trustee Company envelope.

No. 131 is a letter on the Sidebotham and Wilmot stationery, signed by W. C. Rae, per initial C., the W. C. Rae and initial C is written by Miss Cort. I have seen them around the office of the Northwestern Trustee Company. I didn't have anything to do with those. I would say that Miss Cort mailed these to the subscribers who had past due notes. No, sir, I don't know who mailed them, of my own

knowledge. I remember seeing the letter itself in the office, but as to mailing them out, I don't know who did that. I don't remember seeing the letter itself, in the office but circulars of the same kind.

No. 132 is written on stationery of Sidebotham & Wilmot, signed by Robert R. Sidebotham. Mr. Sidebotham dictated it and I typewrote it. I would say in the regular course of the mail it was sent out.

Plaintiff's Exhibit 133, was written on Sidebotham & Wilmot's stationery and is signed by myself. I don't remember who dictated it. The letter after it was signed went in the regular course of the mails.

No. 134 is an envelope of Sidebotham and Wilmot's.

No. 135 is stationery of Sidebotham and Wilmot's signed by Robert R. Sidebotham, with the initial J. The initial J. is mine. Mr. Sidebotham dictated it to me.

No. 136, I saw one just like this around in the office, thereof the Northwestern Trustee Company. The papers like 136 were mailed to some of the subscribers.

Exhibit 140 and 141, I recognize the rubber stamp on the back of these checks, at the top which endorsement reads, Pay to the order of the Conrad Bank & Trust Company, Northwestern Trustee Company, W. C. Rae, Treasurer. It looks like an impression of the stamp that the Northwestern Trustee Company had. They had the stamp around



the office for the purpose of endorsing checks. It was used by Miss Cort.

No. 142, Sidebotham and Wilmot's stationery, signed by Robert Sidebotham. I would say it was dictated to me. It went out in the regular course of the mails.

No. 144, I recognize that letter or circular. I saw some like this in the office of the Northwestern Trustee Company. I don't remember of mailing out any like them, but I understood they were around there for the purpose of mailing out there, sending them to people with paid-up stock. That was the one that was similar to the one I testified to a moment ago.

No. 147, is stationery of the Northwestern Trustee Company, signed by a rubber stamp, W. C. Rae. I don't remember sending this one in particular. I probably saw some like it, but then I don't remember the wording. I remember seeing 148 or blanks of that kind. It is filled in in my handwriting. After they were filled in they were sent to the party in whose name they were filled in. And those parties would be the paid-up stockholders of the Northwestern Trustee Company. Oh, I think Sidebotham and Wilmot had form No. 148, I saw it around the office. After I filled them in they were mailed to the stockholders whose name was filled in.

149, I recognize having seen circulars like that. I don't just recall the wording entirely, but I probably saw them. Well, I swear that those were the notices sent out with 148, or if they went in that,

because I don't remember the letter, as to the time they went out. It is W. C. Rae's signature with a rubber stamp.

No. 150, the signature W. C. Rae, with a rubber stamp, that impression, I would say was in the office when I was there. No. 150 is an envelope of the Northwestern Trustee Company.

No. 151, is stationery of Sidebotham & Wilmot, signed A. M. Alderson, per the initials J. H. J. H. is myself. I do not know who dictated that letter to me. It was probably mailed in the regular course of mail.

Exhibit 154, Plaintiff, I have seen circular booklets of that nature in the office. They were fixed up in bundles and sent to the agents. I think those were printed by Sidebotham and Wilmot, I wouldn't say that for sure, but it is my impression that they were gotten out by Sidebotham and Wilmot.

No. 155, is an envelope of the Northwestern Trustee Company.

No. 156 is a letter head of the Northwestern Trustee Company. I would say that I signed Miss Cort's name to it. Yes, I probably wrote it, I don't just remember the circumstances that led to writing it. I would say that that went in the regular course of the mail.

No. 157 is an envelope of the Northwestern Trustee Company.

No. 158 is stationery of the Northwestern Trustee Company, signed by M. A. Cort. I could not say who dictated or wrote that letter.

No. 161 is a Sidebotham and Wilmot's envelope.

Plaintiff's Exhibit 162, I saw some like it in the office of the Northwestern Trustee Company. I would say that they were fixed up with these booklets and expressed out, to the agents. I don't remember if any were ever sent out by mail. I assisted in fixing these bundles up for them.

No. 169 is on Sidebotham & Wilmot's stationery. Well, it looked as if I might have done the typewriting myself, and with Miss Cort's signature to it. I would say it was mailed to him, after typewriting it, in the regular course of mailing our correspondence.

No. 174 is an envelope of Sidebotham and Wilmot's.

Plaintiff's Exhibit 175, pages 1 and 2, Sidebotham's and Wilmot's stationery, signed by J. G. Wilmot, and dictated by Mr. Wilmot to me. It went in the regular course of the mails after it was written and signed.

The next is 176, a circular and booklet. I am not very familiar with this one. That was before my time. I don't think I ever saw them during my time in the office of the Trustee Company, or Sidebotham & Wilmot.

The next is 177, an envelope of the Northwestern Trustee Company.

The next is 179 and is written on the Northwestern Trustee Company's stationery, signed by M. A. Cort. Yes, I saw some similar to this in the office of the Northwestern Trustee Company. They were

sent to the stockholders having past due notes and to subscribers, I should say, mailed out.

The next is 179. I recognize that as an envelope of the Northwestern Trustee Company.

No. 180 is on a letterhead of the Northwestern Trustee Company, signed William C. Rae, with a rubber stamp. I don't recall this letter.

No. 181 is the Northwestern Trustee Company's envelope. I recall seeing a circular similar to that in the office of the Northwestern Trustee Company. Some were mailed out and some were sent to agents, expressed to the agents.

No. 183, Plaintiff. I would say that was Mr. Tobin's signature, and endorsed on the back of it is some writing. It looks like Mr. Tobin's writing. I am familiar with the handwriting of Mr. Tobin. I have seen him write. I don't remember seeing Exhibit 184 around the office. That was July 1st, 1913, before I was in the office.

Plaintiff's Exhibit 185, at the bottom of that letter it looks like Mr. Tobin's signature. It was dictated by Mr. Tobin to me and typewritten by me. I probably delivered that letter after it was written and signed to Mr. Tobin.

Page 186—have seen that in the office of the Northwestern Trustee Company. That is written on Sidebotham & Wilmot's stationery. Some of them were mailed out, and some of the people came in the office and some of them were given to the agents.

Page three—I recognize, having seen those in the office of the Northwestern Trustee Company. They were in with the other ones.

Plaintiff's Exhibit 187 looks like Mr. Tobin's handwriting. It is endorsed by Mr. Tobin, the defendant here.

At the bottom of Exhibit 188, there are some words written in pencil, the last line. That looks like Miss Cort's handwriting, and those are the words M. A. Cort furnish stock on this for C. W. Tobin. Those were the words I am testifying to.

Exhibit 190 is written on Sidebotham & Wilmot's stationery, signed by W. C. Rae per initial C., and is the handwriting of Miss Cort. Yes, I have seen similar letters to that. They were used by Miss Cort. She used them by sending them to subscribers that had past due notes. They would be sent out in the regular course of the mails.

192 Plaintiff, is written on Sidebotham & Wilmot's stationery, signed by R. Sidebotham, Mr. Sidebotham dictated it to me. After it was written and signed, it went in the regular course of the mails.

Exhibit 193, and Exhibits 194 and 195. Those are Sidebotham & Wilmot's envelopes.

195 Plaintiff and Exhibit 195 a. It is a letter to Mulry, at Chicago, January 13th, 1915, on the stationery of the Northwestern Trustee Company, signed by M. A. Cort. I cannot tell who wrote or dictated that.



196 is on the Northwestern Trustee Company stationery signed by M. A. Cort.

The next is 197, of Sidebotham & Wilmot's envelopes.

Exhibit 198 was the time I was working for the company.

That is Sidebotham & Wilmot's stationery, signed by Robert R. Sidebotham and dictated to me by Mr. Sidebotham. It went in the regular course of the mail.

Plaintiff's Exhibit 200 is only the fac-simile signature that we had in the office.

Exhibit 207 is stationery of the Northwestern Trustee Company, signed Wm. C. Rae with a rubber stamp. The same rubber stamp that was used in the office while I was there.

Exhibit 208 is on Sidebotham & Wilmot's stationery signed W. C. Rae, by the initial C. Wm. C. Rae and the initial C—I would say it was in Miss Cort's. I don't recall the letter at all.

Exhibit 213, I am acquainted with the signature of W. C. Rae only by the rubber stamp. I have never seen him write his signature.

By MR. KELLY: We will admit that is Mr. Kelly's signature. No. 213 is a letter to Donald Arthur under date of March 30th, 1913, signed W. C. Rae.

I am not acquainted with L. D. Clawson, I never met him. I am acquainted with W. W. White. I met him in the Falls. I am acquainted with Mr. Rainwater, the defendant here. I met him in the

Falls. I know C. W. Tobin, the defendant. I knew him to see him over in Butte, but I didn't meet him until I came to the Falls. I know Mr. Rainwater, Mr. White and Mr. Clawson having been employed by Sidebotham & Wilmot. Mr. Rainwater, if I remember right, was there when I came to the Falls. He was an agent for Sidebotham and Wilmot. That I cannot say how long after I went to the Falls he was in the employment of Messrs. Sidebotham & Wilmot. I don't remember. I can say that he was there for, possibly a year after I was there, and then I would see him going in and out of the office while I was there. He was an agent for Sidebotham & Wilmot, a soliciting agent. He went out and tried to sell the stock for the Northwestern Trustee Company. And Mr. W. W. White, the defendant here, he was employed during the time of my employment by Sidebotham & Wilmot. He was one of their agents, selling the stock of the Northwestern Trustee Company. I don't remember exactly, but I would say he was employed by them as such agent about three or four months, I wouldn't say as to that. In 1914. Mr. C. C. Rainwater is the one I testified regarding. Tobin was there during the time of my employment, with Sidebotham & Wilmot. He was in their employ before I came there and was in their employ after I was there. For how long, Oh, after I was there, to the best of my recollection, about two years and a half, or something like that, I couldn't say for sure, I didn't keep track. He was employed as a soliciting agent, sell-

ing stock and getting subscriptions of stock for the Northwestern Trustee Company.

Exhibit 222 is on Northwestern Trustee Company's stationery and is M. A. Cort's signature.

Exhibit 223 is a Northwestern Trustee Company envelope. I don't remember who wrote it, type-wrote it. Such letters were sent in the regular course of mail, deposited in the United States Post Office at Great Falls, Montana. Either that or dropped in the chute. There was a United States Mail chute in the building where the offices were.

Plaintiff's Exhibit 224, is Sidebotham & Wilmot's stationery signed by Robert R. Sidebotham and it was dictated by Mr. Sidebotham. That letter after it was typewritten and signed went in the regular course of the mail.

Exhibit 225, is written on Sidebotham & Wilmot's stationery. I wrote it. Why, this was a letter that accompanied that one. As I remember it, this letter was enclosed with this one, 225 was enclosed with 224.

No. 226 is on Sidebotham & Wilmot's stationery, signed by Robert R. Sidebotham and dictated by R. R. Sidebotham to me. The handwriting on the side margin is in my own hand-writing, starting at P. S. and written lengthwise with the paper. This letter, 226, after it was typewritten and signed, I think went in the regular course of the mail.

No. 222, the stationery is Sidebotham and Wilmot's signed by Robert R. Sidebotham. I will say that I wrote it, but as to who dictated it I couldn't

say. After that was written and signed it went in the regular course of the mail.

CROSS EXAMINATION.

By JUDGE SMITH:

Miss Cort came there as book-keeper, I would say, in the middle of May, 1914, and she acted as book-keeper until August or September of the same year. Then she was elected Assistant Secretary and Treasurer, because I remember it. Yes, she got \$125.00 a month salary as Assistant Secretary and Treasurer. She continued to act as book-keeper and as stenographer.

Exhibit 113, as I remember these letters, they were sent out to the stockholders. I cannot say that Miss Cort sent this one out in particular. I know similar circulars like them were sent out from the office.

Q. Are you prepared to say now that Miss Cort had anything to do with sending any of them. Do you recall the fact that Gov. Norris was consulted about that particular circular 113, just to refresh your memory?

. I don't think, I know there was considerable talk, the stockholders didn't understand about this circular, and this letter was sent out to explain the circular.

Q. By Mr. Sidebotham, wasn't it?

A. As I remember it.

Q. Do you recall the fact that it was first submitted to Governor Norris?

A. I don't remember that, when I said that that

letter was sent out by Miss Cort, I didn't mean that she phrased the letter. I mean that she may have assisted in holding them up, to send them out of the office with the stock certificates.

Q. Now, I call your attention to the word "authorize" just before the words "capital and surplus." I will ask you if you know the history of the placing of that, what is evidently a stamp there, bearing the word "authorize." If you do, I would like to know what it is, if you don't just say so?

A. Well, I was instructed to stamp those "authorize." On Ex. 191. No, sir, I don't recall when and what gave rise to those instructions, I don't just recall when, or the circumstances even. I remember that I stamped them. From that time on I stamped them, all of them that went out. I tried to get all of them. At any rate that was my purpose.

Exhibit 176, which is the circular with the name of the stockholders, and a picture of a building on the outside printed in red and black, I do not recall when that was printed. It was not printed during my employment that I know of. If there were any copies of it in the office after I got there I didn't pay any particular attention. I do not recall ever seeing one before this trial. This shows that it was printed by the McKee Printing Company, but it was never circulated that I know of after I was there.

Witness excused.

Whereupon Mr. Atkinson was recalled on behalf of the Government and testified as follows:



## DIRECT EXAMINATION.

By MR. MURPHY:

Exhibit 176, I recognize that. There were some of those in the office of the company when I went there. There was not so very much done with them, a few of them were probably sent out on account of the name at the bottom, Frary & Burlingame, they were not distributed. Shortly after that they quit distributing them. My recollection is that there were some of them distributed at first during my time of employment there. The agents used some of them. I couldn't say positively that any of them were sent through the mails.

Exhibit 40, I recognize it or similar ones. It was a circular letter sent out in the latter part of July and first of August, 1913, by the Northwestern Trustee Company, Sidebotham and Wilmot. I did have something to do with the sending out of those. It was sent to the stockholders of the Northwestern Trustee Company. It was sent out in envelopes through the U. S. mail. The signature at the bottom of that is Robert R. Sidebotham's.

Exhibit 57, I recognize that. Have seen that circular in the office of the company. That is a duplicate of the letter I testified to as Plaintiff's Exhibit 40, the only difference is in the name. The circular is addressed to Gust M. DeCelles, Havre, Montana. This circular and other circulars were sent out from the office, through the mail.

No. 58 is an envelope of the Northwestern Trustee Company. That is the size of envelopes that

they used in my employment there, during part of the time at least, there were other sized envelopes also.

Exhibit No. 59 is an envelope of the Northwestern Trustee Company.

Exhibit No. 60. I have seen it or similar ones in the office of the Northwestern Trustee Company at Great Falls. This was a circular letter that was sent out to stockholders. It is signed with the signature of Robert R. Sidebotham, circular letter. I did send out those circular letters to the stockholders of the corporation, through the mails. These circulars that I have testified sending out through the mails, I sent them to subscribers as well; under Mr. Sidebotham's authority I got the circulars out.

Exhibit 52, green circular set forth in the indictment, I recognize that circular. I have seen some of those in the office of the company. Some of these were sent out to the stockholders through the U. S. Mail, and also the subscribers.

No. 61, I have seen that circular or similar ones in the office of the company. Some were sent out, and some were given to the agents. Those that were sent out, were sent through the mails, and some were expressed. They were addressed to the stockholders and subscribers.

Exhibit 145, is in my handwriting. Sidebotham and Wilmot per R. H. Atkinson. That check was deposited in the Conrad Banking Company, to the credit of Sidebotham and Wilmot.

Ex. 184, dated July 1, 1913. I have seen this one,

or similar ones to it in the office. These were circulars that were used by the agents, a few of them probably mailed out to some of the stockholders or subscribers. They were distributed by the company to the agents, we gave most of the agents quite a number of copies. I expect I did the distributing of them to the agents, most of them, under Mr. Sidebotham's orders, Sidebotham and Wilmot.

#### CROSS EXAMINATION.

By MR. GALEN:

When I say that I saw these various exhibits which I have identified in the office of the company, I mean in the office of Sidebotham and Wilmot. The offices were together at that time.

I recognize the booklet No. 176. That was made out by the Fiscal Agents, Sidebotham and Wilmot.

Exhibit 40 is signed by the Northwestern Trustee Company, by Robert R. Sidebotham, President, and it was sent out shortly before the stockholders' meeting. It was sent by Mr. Sidebotham and myself, I don't know if the company had any meeting to authorize it, it had reference to the meeting to be held shortly.

Q. Now, the circular No. 62, which is the printed one shown you by Mr. Murphy, in the indictment, you will recall is opening up the indictment to indicate that particular exhibit. Is that one sent out by Sidebotham and Wilmot, or by the company?

A. Oh, I think it was sent out by both. I mailed the same circular when the offices were in the First National Bank Building, is my recollection.

Exhibit No. 61. I think that was the Sidebotham and Wilmot publication, I haven't looked at it before to see who paid for it.

No. 184, a sort of a newspaper, called Great Falls Development Bulletin, is either Sidebotham or Wilmot publication or Mr. Sidebotham himself, that was gotten out for the organization. It was sent out by the Fiscal Agents rather than by the company.

### CROSS EXAMINATION.

By JUDGE SMITH:

Exhibit 176, Frary & Burlingame's names are on there as the general agents of the company, and when the relations were severed between Frary & Burlingame and the company, very shortly after, they quit using the circulars and with some of them, they pasted other slips over them. That was made to eliminate Frary and Burlingame's name, and also the raise in the price of the stock, I believe they changed it in that manner on some of the circulars.

Witness excused.

Whereupon MISS HOSKING was recalled for further cross examination by Mr. Galen:

I was in the employ of Sidebotham and Wilmot rather than the employment of the Northwestern Northwestern Trustee Company, and all of these various letters that I identified on the stand I sent out at the direction of Sidebotham and Wilmot, rather than the company, either that or helping Miss Cort mail them is all.

By MR. McCONNELL:

Mr. White worked for the Fiscal Agents, Sidebotham and Wilmot, for about four months in 1914. I would say that the time would be correct if I stated it from the first of December, 1913, to the first of March, 1914. I know it was in the winter time.

REDIRECT EXAMINATION.

By MR. MURPHY:

At the time I assisted Miss Cort in sending these out, I was in the employ of the Northwestern Trustee Company and not in the employ of Sidebotham and Wilmot.

Whereupon the Court adjourned until Tuesday, January 23, 1917.

Whereupon John Bleier, a witness called and sworn on behalf of the Government, testified as follows:

DIRECT EXAMINATION.

By MR. BALDWIN:

My name is John Bleier. I live at Missoula. I am driving the wholesale truck for the M. M. Company. In December, 1914, I was in the automobile business, 817 S. Higgins Avenue, in Missoula, Montana. I am acquainted with Robert R. Sidebotham. In 1914, I had business with him, he purchased two cars, two oldsmobiles from me. I did not at any time buy from Sidebotham, or Sidebotham and Wilmot, or the Northwestern Trustee Company, a note against Mr. J. A. Best. I did not buy any notes from any of these parties any time. Why, I had a bunch of notes.



Q. And for what purpose were you holding them?

By JUDGE SMITH: That is objected to as irrelevant and immaterial.

By MR. BALDWIN: It is merely preliminary, if your Honor please.

By THE COURT: He may answer. Objection overruled.

Exception noted.

A. Why, more to hold the deal, or tie it up like that, that is what they claimed.

By JUDGE SMITH: I suggest that if we are going to this, that we go into it intelligently, it should be followed up properly, I don't know what they are talking about.

By THE COURT: I suppose they will make it clear.

Q. To hold what deal?

A. The automobiles, the two cars.

Q. I will ask you in connection with that matter, did you receive any letters from Mr. Sidebotham?

A. Yes, sir. In December, 1914, it came through the United States Mail to the office. I received that (Ex. 225) through the mail at Missoula, Montana. It was enclosed in with exhibit 224 and it was received in the same envelope.

Mr. BALDWIN: We will now offer these in evidence.

JUDGE SMITH: I object to these as incompetent and irrelevant, tending only to encumber the record, and not to illustrate any issue in the case.

By THE COURT: They may go in. I suggest you confine yourself to indictment letters, unless you have something special. The objection is overruled.

JUDGE SMITH: Exception noted.

Whereupon plaintiff's exhibit 224 was received in evidence, read to the jury, and is in words and figures, as follows, to-wit:

NORTHWESTERN TRUSTEE COMPANY.

PLAINTIFF'S EXHIBIT.

224.

NORTHWESTERN TRUSTEE  
COMPANY.

(Incorporated.)

(Letterhead.)

BOND, MORTGAGE AND INVESTMENT  
SECURITIES.

GREAT FALLS, MONTANA.

December 22, 1914.

Tumulla & Bleier Auto Co.,

Missoula, Montana.

Attention Mr. Tumulla.

Gentlemen:

Enclosed find note of J. A. Best for \$1,020 due and payable on January 1, 1915. This note is perfectly good and the man has a large deposit with the American National Bank of Helena. I would suggest that you write him a letter on your own letterhead along the lines of the enclosed letter. \$680 of this amount is to be applied on the Baby Olds and the balance of \$340 is to be returned to us

when collected. I would suggest that you send your letter to him about the 28th and we will also aim that the note has been transferred to you.

I Would also suggest that you turn this note over to the Missoula Trust & Savings Bank with instructions to them to collect on same, and get a receipt from them for the note.

If you do not collect note by January 25d, immediately file suit on Best and have your attorneys attach his bank account in Helena. If you should notify him that you are going to sue, he is liable to withdraw his funds.

Wishing you a Merry Xmas and a Happy New Year, I am,

Very truly yours,

ROBERT R. SIDEBOTHAM.

RRS.:JH.

The enclosure, exhibit 225, is as follows:

NORTH WESTERN TRUSTEE  
COMPANY.

(Incorporated.)

(Letter-head.)

SIDEBOTHAM & WILMOT, Sole Fiscal Agents.  
GREAT FALLS, MONTANA.

December 22, 1914.

Mr. J. A. Best,

Elliston, Montana.

Dear Sir:

This is to inform you that we have purchased your note for \$1,020 from Sidebotham & Wilmot, Sole Fiscal Agents of the Northwestern Trustee

Company of Great Falls, Montana, and have placed the note in the Missoula Trust and Savings Bank where you will kindly make remittance.

Thanking you, we are

Very truly yours,

TUMULLA & BLEIER AUTO CO.

That note had never been in my possession. I never authorized Sidebotham and Wilmot to bring an action on that note in my name. I was informed by Mr. Sidebotham that an action had been brought on that note in my name. I think it was Sidebotham wrote me about it. Neither Sidebotham and Wilmot, or the Northwestern Trustee Company, or any one endorsed the notes of Messrs. Jackways, Johnson, Cleary and Faust.

Exhibit 227. I have seen that paper before. I got it through the mail at Missoula, Montana.

MR. BALDWIN: We now offer this Exhibit in evidence.

I did have a conversation with Mr. Sidebotham about January, 1915, in reference with my connection with the notes, whatever that is, in evidence. The conversation, as near as I can fix it, was in January some time, but I couldn't state no date. Well, it was the Best note. He said that there was a suit filed against him under my name. He said, "You will have to insist on it that you bought the note," and he says, "If you don't," he says, "they will catch onto the trick, and we will be up against it."

## Cross-Examination.

By JUDGE SMITH:

I am in the garage business there, and the Tumulla-Bleier Automobile Company is a partnership.

Defendant's Exhibit 228 I think is my partner's signature. Certain notes were turned over to our partnership in payment for an automobile, or two automboiles. As far as I understand, he was going to give the note as payment, which I wouldn't accept, because he was unable to do that. Did not take them as any kind of security. Yes, I had the notes. I was claiming to hold the deal tight, to show that they meant that they wanted the cars, to show that they wanted the cars. I don't think that I could hold the notes, because they were not endorsed to us. I don't know if they were payable to "myself." Even if they was, I don't think we would understand that. He was going on the fact that they had to be endorsed to us. My idea was that they had to be endorsed. I didn't want to take it. They was going to give us the notes as payments, which we couldn't do, and couldn't accept. Because in the first place we had to pay for the cars in cash when they came, and the second place we didn't have the money to do it with. Then they pulled their notes back because they didn't pay any attention to the collection, and they said that they would take them back, and the attorney, E. A. Smith, I believe it was, that he would collect them in for me, he said. They wrote me that, and, he said he would be more familiar with the business, and



whenever this is collected, they will apply it on their cars. Mr. E. A. Smith is an attorney in Great Falls. He said that he would do that. So I returned them all, and then they sent me the copies of notes. And after so much money come in they wanted the car. I told him, I said, "Our understanding was that the car was to be fully paid for before it was delivered," so he says, "We will see about it," so he wrote back, I don't know to who, he got the balance, so that they took one car, and the other car was cancelled. Then they claimed that they would get somebody else to take the note, because I couldn't do it. He said that they would take the note to somebody else, that they would buy the notes, and they could have their car immediately. I understood, while they were paying for the first car, that they were gradually collecting money on these notes, and turning it in to us. And finally the deal was off so far as the second car was concerned, but in the meantime, suit had been begun against Mr. Best in our name on one of these notes.

Q. You didn't understand that anything of that kind was to be done, the fact that you thought they had to be sold in order to give you legal title?

A. Yes, sir; furthermore, I went up to the Missouri Trust & Savings Bank, which they wrote to me to do, and he turned me down, so that I gave up the deal entirely.

I tried to sell the note, and they turned me down, which was the bank I was dealing with, and I finally gave up the deal, I thought it was not worth any-

thing. In the first place we didn't know the people, they was strangers, and they finally came up again and said they would collect the notes because I wanted the first payment of Best. The first payment came due on Best's note while I had it, on January 1st, I believe his note was due. While I didn't believe very much in it, I didn't pay no attention, nor did I ever write to Best about it. I had it. That is the same note that I was inquired of on direct examination. As far as I was concerned, it was a straight business act on my part, to sell automobiles and get the money.

Whereupon Defendants' Exhibit 228 was received in evidence, read to the jury, and is in words and figures as follows, to-wit:

"The Hotel of Safety, Economy and Personal Attention. Rooms with or without Bath. Most Reasonable First-class Cafe. Always stop at Palace Hotel.

---

Seal

Grand Hotel, Walla Walla, Washington.

Palace Hotel, Missoula, Montana.

---

MULLEMER, HALLE & RICK, Proprietors.

Local and Long Distance Phone in every room.

Commercial Sample Rooms.

The place where the traveling men feel at home.

Missoula, Montana, Dec. 18, 1914.

Received of R. R. Sidebotham, one note H. J. Faust, \$50, date Sept. 2, 1914. Note Herbert T.

Cleary \$50 six months—note dated Sept. 2, 1914, and note E. C. Johnson, \$50.00 six months dated Sept. 2. Note C. A. Jakways six months \$100.00 dated Sept. 4, 1914.

These notes are given as a first payment on one Babe Oldsmobile at \$1,385.00, entire amount to be paid before March 15, 1915. TURMULLA.

Turmulla is my partner.

Q. Mr. Bleier, calling your attention to a matter of the conversation that you had with Mr. Sidebotham of which he just reminded me, do you know Mr. Rainwater, the gentleman sitting right back there with his hand up to his face, right there (indicating)?

A. I am pretty sure he was over there once with Mr. Sidebotham.

Q. Do you recall that on that occasion when Sidebotham and Rainwater were there, the matter of letting them take the car out was discussed with you, that \$700 had already been paid through the medium of collections on these notes, and that you let them take the car out?

A. No, sir, I did not. He is mistaken. That was the demonstration car. I let them have the demonstration car, my salesman took them out for one or two days.

#### GOVERNMENT RESTS.

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#### INSTRUCTIONS OF THE COURT.

Gentlemen of the Jury:

Now that the evidence and the argument has been

concluded in this case the time has come for the Court to deliver to you the instructions, as they are called, that is, mainly what rules are material and important in this case, and which control the case, and which must control you in your deliberations. The Court, may, however, comment on the facts, if the evidence of it sees fit; but if it expresses any opinion of the facts, or what the evidence proves, you are not bound by the opinion of the Court in that respect; you are bound to accept from the Court the law as he states it and the reason is that the Court always states the law the same, so men are tried by the same law always. But if jurors were free to take their own version of the law, one jury might have one view, another jury a different view, and men would be tried not according to the law, as it is, but according to what different juries would think it was. So remember that, you take the law from the Court, the facts, the evidence, what it proves, what <sup>inference</sup> ~~influences~~ you will draw from the evidence, the facts and circumstances in the case, that is exclusively for you to determine. Remember, as I said, you are not bound by any opinion of the facts that the Court might express.

The Court is responsible for the law.

You are responsible in arriving at a just determination of the facts from the evidence; it is merely the written charge so that the Defendants, and each of them, and the Court and you, and all of us may know for what they are upon trial.

There are now in this indictment, as you know, but five counts. Before we conclude, the Court will state to you what is to be done with the others, and the offenses charged in those five counts are four specific offenses of mailing letters in the mails of the United States, and the last count, the charge is a conspiracy, devising a scheme to defraud, and then doing overt acts, such as mailing letters in connection with the conspiracy. The first charge is that the defendants by means and methods set in the indictment, devising a scheme or artifice to defraud, or of obtaining money and property of divers persons by inducing them to buy stock in the Northwestern Trustee Company, and that was done by false and fraudulent representations and pretenses. The last charge, as I have stated to you, is that a conspiracy was formed to defraud and to use the mails in executing it.

Now, the law is an act of Congress, and that which applies to the first four counts now left for you to consider is as follows:

Whoever having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false and fraudulent pretenses, representations or promises, shall for the purpose of executing such schemes, or artifice, or attempting to so do, place or cause to be placed any letter, circular or advertisement in any letter box, or authorized depository for mail matter, to be sent or delivered by the post office establishment of the United States is guilty of an offense,



and if convicted by a jury, shall be punished as the law directs within limits, leaving a very large discretion to the Court to exercise, according to the degree of terpitude of the offense that might be committed.

The other act involves the last count, is alleged to be a violation of Section 37 of the Penal Code of the United States: If two or more persons conspire to commit an offense against the United States, and one or more of such parties do any act to effect the objects of the conspiracy, each of the parties to the conspiracy, if convicted, shall be punished as the law directs. Again, leaving a large discretion to the Court in the matter of punishment depending upon how aggravated or how small the offense might seem.

Before the Court proceeds to describe more fully what are the offenses set forth in these acts, it will say to you that the government has a right to determine for itself what crimes to prosecute and in what order and when it exercises a wise discretion in that matter, and often it is better for the public welfare that some only be prosecuted, and some others used as witnesses because the Government very often finds itself in the position where the proof is difficult and hard to obtain, and it is compelled to use some of those who may be guilty. The Court doesn't say it is so in this case, but who may be, in order to procure evidence against the others, and it is legitimate and for the public welfare that it should be so. Furthermore, when a man is put

on trial in this Court by indictment of the Grand Jury, it is not open to any one to save the Defendant in a proper proceeding, before his actual trial begins, to question the means or the methods by which the indictment was procured by the Grand Jury. The presumption is conclusive that when he comes to actual trial in this Court, that the indictment was properly found, and he had his day in court here, and neither he nor his counsel in argument can with propriety argue to the jury that some ulterior purpose of motive produced the indictment, and that some improper methods were used to secure the indictment. So when counsel attempted to argue that to you, while the court did not permit him to express his opinion about the grand jury, the Court should have stopped him in the beginning, and not even allowed him to question or insinuate that the district attorney or grand jury were guilty of any impropriety in filing in this court the indictment that it did, because as I state to you, he had his opportunity, each of these defendants long since to come into this court in a proper proceeding, and question whether that indictment was procured by illegal evidence, or not.

You will not allow yourselves to be affected by anything of that sort. The Court is not going to tell you that this is indictment of a bad case on the part of the counsel, that used it, and the Court will not say to you that counsel sought to prejudice you in this case, as intimated a while ago, but certainly was said for the purpose of exciting some

sympathy for his client. I warn you carefully against allowing anything of that sort to influence you.

Gentlemen of the jury, the scheme or plan to defraud in a simple sense analyze the first four counts submitted to you, charging a scheme or plan to defraud, or for obtaining money or property under false pretenses, representations and promises. That is a scheme to defraud, and what does it take to make up an offense of that sort? Why, a scheme to defraud is a plan to defraud, a plan by which one man attempts to produce a false impression in the mind of another to induce him to enter into a bargain and give up his money upon a state of facts which are not through, but which the party who concocts the plan imposes or endeavors to impose upon the other party as true. It includes everything designed to defraud by representation, as to past or present facts, or suggestions and promises as to the future when they are made by one, who, because of his superior knowledge or superior position, we will say, in reference to this company by one who has had inside knowledge of the facts, if he goes out and makes extravagant suggestions and promises, not warranted by the facts as he knows them, in order to induce some other men to contract with him for the stock, who otherwise would not buy, that is a scheme or plan to defraud, within the meaning of the statute. If the plan is in good faith, no matter how visionary the plan is, there is no offense, that is to say, if the parties, these De-

fendants made representations of what this company would do, what it would eventually grow to, if they actually believed it, and at the time did not deliver themselves of any false representations, of facts, why, they would not be guilty of a plan or a scheme to defraud; but if in addition to hopes and expectations in which they believed with the utmost good faith, they falsely represented the present condition of the company or concealed material facts, which would go to enable those with whom they deal to determine the present condition, they are responsible for misrepresentation in the matter of the present condition of the company, responsible for fraudulent representations and concealments, and the scheme would still be a scheme to defraud, even though they believed that eventually it would grow to the extent that their hopes and expectations had led them to believe.

A scheme to defraud does not require to be fraudulent on its face. It may look as fair as truth itself upon its face, but if it is reasonably calculated to deceive persons of ordinary understanding, and prudence, and intended that the mails be used to execute it, it would be a false and fraudulent scheme within this statute. That involves to some extent the matter of these options and contracts spoken of in this evidence, they were innocent in themselves, but remember that might be the gun with which the killing was done. A man may go down the street, and buy a gun; he has done a lawful act, but if he takes that gun and goes out and



kills some one, it is a very material piece of evidence to show that he bought the gun, in order to determine from all the circumstances, the gravity of his offense.

Yet while a scheme or plan may be fair on its face, yet if there is bad faith back of it, and is reasonably calculated to deceive persons with whom they deal, of ordinary understanding and prudence, it is a scheme to defraud within the meaning of the statute and this indictment.

The last charge in the indictment is one of conspiracy, namely, that these defendants entered into a conspiracy to defraud and to use the mails in executing that conspiracy. Mind you, the offence there is a plan not only to defraud, but a plan to use the mails to carry out the plan to defraud, quite a different offense from that charged in the first count, though to a certain extent they overlap and intermingle. Now, a conspiracy is commonly called a partnership in crime. If two or more men agree or have a tacit understanding that they will embark upon an enterprise that the law forbids as unlawful, or if they agree, or have a tacit understanding that they will embark upon a lawful enterprise by unlawful means, and do some act to carry it out, even though they never succeed in accomplishing it, they are guilty of a conspiracy.

You must remember that a conspiracy need not be proven by finding it written out in black and white, that two or more men entered into a solemn agreement that they were going to cheat or defraud



someone, as it is alleged was done in this case. Conspirators, as a rule, are apt to cover up their trail, as any one who is guilty of fraud attempts to conceal it, and that is why the proof is difficult to make. It is to be gathered by the jury from the facts, and circumstances in the case, which may be sufficient to convince them that the conspiracy existed. As a matter of fact, two persons can be conspirators without ever agreeing in words. They may have a tacit understanding that both are working to the same and common end, which the law forbids; one of them doing one part of it, one of them doing the other part of it, and from the segregated parts alone you will determine as a whole, the jury may justly infer that the conspiracy or agreement existed, though there is no direct proof of it. For instance, if here was gathered in Helena timber framed by four different men in different sections in this town, and you find them all gathered together in Helena, and find that they build a good complete house you would at once conclude that those four men in different sections of the state had an understanding, together to make those timbers, one to make one part, and one to make another, and so finally the whole made a house, and you would say that that agreement undoubtedly was entered into by them, and under like circumstances the structure or object accomplished finding one has done part of it, and another another may well satisfy a jury that there was a preconceived plan, or a tacit understanding of the parties to work to a com-

mon end, in other words, that there was a conspiracy.

The Court will say to you at this time that you are instructed that the burden is on the Government to prove sufficient of the charge in the indictment to satisfy you that the defendants, or one or more of them, entered into, or had a plan or agreement to defraud, or to obtain money or property by inducing people of the State to buy stock in the Northwestern Trustee Company by false and fraudulent representations, pretenses or promises.

The Government is under no obligation to prove every fact alleged in the indictment, if it proves enough of the methods set out in the indictment going to make up the false and fraudulent pretenses and promises sufficient to satisfy you that it was a scheme to defraud as the Court has and will establish further define to you. If it establishes sufficient of the charges of the means and the methods and satisfies you that there was a scheme to defraud as charged, it is wholly immaterial whether it has proved every item of the means, in other words, the Government has charged many means, and ways by which the scheme or plan of selling stock by false promises and obtaining money and property thereby. The Government has charged many ways by which it is alleged these Defendants did that, it is only necessary that it prove enough of those ways to satisfy you the scheme charged was had or made by one or more of those Defendants. The Government must prove that the scheme or plan to de-

fraud, or to obtain money or property by false and fraudulent promises or pretenses, it must prove that to your satisfaction, beyond a reasonable doubt, or you will acquit any one or all of the Defendants, in respect to which it has failed to so prove.

You are instructed that the scheme, artifice, or device to defraud, as here charged, must be a real one; mere passive cognisance of the crime or unlawful act alleged, which was to have been committed, or mere negative acquiescence is not sufficient. There must be common design, or knowledge of it, or active aid to further it, and if, after the consideration of all the evidence, you have a reasonable doubt as to either of those Defendants having such designs, or having knowledge of the design, scheme, device, artifice or plan, having done some act, to further it, you must acquit that Defendant. In other words, if any Defendant here merely had knowledge that the others were planning a scheme to defraud and had a scheme to defraud, that Defendant that simply had knowledge of it stood passive and did nothing, or if there is any in that situation, or who merely stood by and received the benefit from it, he would not be guilty of any of the charges in this indictment, but if he did anything to help it along, for instance, if raising the stock was a part of the scheme; if he voted as a Director to raise the price of the stock so that the others might bring the scheme to a successful conclusion, that would be passive, that would be active aid, and he would be liable with the others.

You are instructed that to hold to any of the first parties charged liable as participators in the acts charged in this indictment, you must be satisfied beyond a reasonable doubt that that party did some act, or made some agreement showing his intention to be a participant, and whether or not that act was done in furtherance of the common design alleged, and whether it was a natural and probable consequence flowing from the execution of the common design alleged, is a question for you to determine, for the jury to determine.

Further the matter of the law of conspiracy, if one joins after the conspiracy has been formed by others at an earlier time, and if he is acquainted with all the acts and declarations of the others, prior to the time that he joined the conspiracy, they then become admissible evidence against him to determine the intent with which he joined, and the intent with which he continued it. When men join in a conspiracy, when the conspiracy is proved, the acts of any one of them, or the letters of any of the, said or done for the purpose of executing the conspiracy, is the law in the acts, the declarations, the letters of all of them, and is competent evidence against all of them, because they are partners in committing the crime.

In the matter further of the eleventh count, the conspiracy to defraud and to use the mails to execute it, unless you find that there was a scheme or plan to defraud as alleged in the eleventh count, and that some of these defendants agreed to use the



mails to execute the scheme or plan, and some one or more of the letters set out in the eleventh count were mailed as alleged in the indictment, you will find them not guilty of a conspiracy to use the mails as alleged in the eleventh count. So, too, if there was a scheme to defraud, but no agreement or understanding to use the mails to execute it, then even though use was made of the mails to execute the scheme without any agreement or understanding to use the mails, there was no conspiracy as charged in the eleventh count, and you will acquit the defendants. In other words, the eleventh count, the Defendants are not being tried merely for the scheme to defraud, but for conspiring to defraud, and to use the mails to accomplish the fraud, and you must find that the agreement or understanding was that the mails were used, otherwise the eleventh count is wholly unproven.

You are instructed that mere knowledge, acquiescence or approval of the act or acts charged in this indictment, without co-operation or agreement to co-operate, is not enough to constitute one party to a conspiracy, as charged in the eleventh count. There must be intentional participation in the transaction, with a view to the furtherance of the common design and purpose, at some stage during the life of the conspiracy.

It is not necessary that all conspirators should have been in from the beginning, nor that they should have agreed or understood that they would use the mails to accomplish the conspiracy from the



very beginning, but if they agreed together to plan a scheme to defraud, and if at any time thereafter they also agreed, or entered into an understanding that they would use the mails for that purpose and then mailed one of the letters charged in the indictment, they would be guilty of a conspiracy in that count charged.

You are instructed that in every crime or public offense there must be a union of joint operation of act and intent. That is to say, no one can be guilty of a crime unless he does some act with an intent that he should do that act. What is intent? Intent is the quality of mind with which an act is done. It is the mental process, the design, the aim, the purpose or the object of the act. How is this intent arrived at? Being a mental process, you cannot penetrate to the mind of a man, if he will not tell you, unless you can infer from his conduct so that the law is, a man's intent is manifested and shown by all the circumstances connected with the offense. A person is presumed to intend the ordinary consequence of his voluntary acts. If a man does a thing which is ordinarily followed by certain consequences, you have a right to presume and the laws says that you should presume that he intended the consequences. If a man walks up to another and knocks him down on the street, you would not need to ask him why, whether he intended to do that, because that was the consequence of the blow, and you would presume that he intended to do it, intended to commit an assault and battery. So it is

in this case. If the acts done by any of the Defendants, or more of the Defendants, the ordinary consequence being to defraud the purchasers of the stock of the Northwestern Trustee Company, you have a right to presume that they intended thus to defraud.

You must remember in this case that after all the offense for which these defendants are charged is not of defrauding the company, not at all. Their design toward the company may have been of the very best; they may have given it every dollar that it was entitled to under the options and contracts. But the charge is that they were seeking to defraud different persons throughout the State into buying the stock by false promises, false representations and fraudulent pretenses in respect to the company.

You are instructed that to bring in a verdict of guilty as to any of these defendants, you must find that an intention to defraud existed on the part of that particular Defendant. This intent means that the Defendants, or some of them, had a purpose, proposed to induce persons to buy stock of the company by means of false representations, suggestions and promises, as alleged in the indictment. If this was the aim and purpose of the Defendants, or any of them, then there was what the law terms, an intent to defraud.

You are instructed that fraud, which is involved in this case, is never presumed, as a matter of law, and must be affirmatively proven. The law presumes that all men act fairly and honestly; that

their dealings are in good faith and without intention to wrong, cheat or defraud others, and until the contrary is shown by clear and satisfactory evidence, beyond a reasonable doubt, that presumption must govern your deliberations; and unless you find, beyond a reasonable doubt, that the Defendants, or some of them, participated in the transactions complained of, with the intention and purpose of defrauding divers persons of their moneys and goods, then your verdict should be not guilty as to the Defendants, or Defendant, not participating in that intent.

You are told that fraud must be affirmatively proven. How proven? Fraud may be inferred from the acts and conduct of the party charged, and all of the attendant facts and circumstances in the case. It is rarely that fraud is proven by statements or writings of the accused person that he intended a fraud. It is mainly a question of intent. Intent, as you have been told, is the quality of mind with which a person acts, his design, his aim, his purpose. What did he propose to do when he was acting? And it may be proven by inference from the circumstances of the person's acts and conduct—and every person is presumed to intend the ordinary consequences of his voluntary acts. If his acts are such that their ordinary consequences are to defraud some one, it is to be presumed that he intended to commit the fraud, and thereby his fraud is affirmatively proven. That is to say, if a person makes representations, which he knows to be false,

or if he makes promises which his superior knowledge leads him to know cannot be carried out, so as to induce another to bargain with him, in this case, to buy stock in the company, it is to be presumed that he intended to defraud.

Coming back again to the scheme to defraud. The hopes held out, the promises made, the expectations aroused, you are instructed that no matter how visionary the views of any of these Defendants may have been, no matter how ill-founded their conclusions may have been, no matter how much sheer incompetence in the exercise of judgment may have been their portion, unless the evidence satisfies you that thy acted in bad faith, they cannot be convicted, since good faith excludes any possibility of fraud. But there can be no good faith in knowingly making false representations of past or present facts. One may entertain the most extravagant hopes for the future, and make most extravagant promises for the future, yet, if he honestly believes them, he is in good faith, and not guilty of fraud. At the same time if he expressly or impliedly represents that such hopes and promises are justified by present conditions, when he knows that they are not, or if he makes such promises with no intent or expectation on his part that they will be performed, he is in bad faith and guilty of fraud, if such hopes expressed and promises made by themselves, are reasonably calculated to deceive persons of ordinary understanding and prudence.

In the matter of fraud, a man's mere opinion



ordinarily is not fraudulent, but if he is an expert in the matter in hand, with which he is dealing, or if he mixes his opinion with misrepresentations of facts, or if he is in a position to have superior knowledge, why, then if he delivers himself of an opinion in which he does not believe, in order to deceive some other person, even that opinion is and may be a part of a scheme to defraud. On occasion the half truth may be fraudulent. A man may state something in a way that, while part of it is true, he intends to create an impression that more of it is true, and it naturally has that consequence and there he might be guilty of fraud.

In this case if the raising of the price of the stock, as was done repeatedly, was intended and calculated to impress the buying public with the idea that the condition and assets of the company justified the increased value, and that the excess over the par value was to go into the surplus, why, even if they intended that some small portion of it was to go into the surplus, so their statements were that far true, and even if there was some justification for a small raise if they went far beyond and made a large raise, though there might be half truths in their representations, it would be fraudulent in law, because it was intended and calculated to deceive.

You are instructed that taking or giving options on corporate stock, which enters into this case, or entering into a contract for the sale of the capital stock of a corporation with sales agents is proper in itself, and not objectionable under the law; and



that it is only when the directors, officers, or agents make misrepresentations or indulge in fraud, in the sale of the stock, and make use of the mails in connection with such sales, that they are held liable under charges like those in the counts before you now.

Options and subscriptions—that were in fact options, though innocent in themselves, may furnish the incentive and motive to raise the price of the stock, and create a public impression that the stock was worth the price, so that those holding the option and subscription might reap a benefit, and so if that impression was knowingly created by false and fraudulent representations, suggestions, or promises, such options and subscriptions would lie at the foundation of a scheme to defraud, a scheme to defraud made by false representations. Now, false representations or suggestions and promises may be both expressed and implied, that is, one may say them by words, directly, or imply them by words, also by acts and by manner. If by half truth, or the truth accompanied by concealment of material facts, so that all taken together a false impression is produced or created, and is thereby sufficient to deceive ordinary persons, they are fraudulent representations within the statute.

Extravagant promises or predictions, or opinions by experts, by those in a position to secure and have superior knowledge of the facts, not warranted by the facts, which opinions are not by them honestly entertained and reasonably calculated to deceive

ordinary persons are fraudulent within the meaning of this Statute. False representations and pretensions can be made by acts done as well as by word of mouth. Remember that the gist of a false and fraudulent representation is the production of a false impression. That is what it is for, and if that false impression is intentionally done, or made, the means are immaterial, so long as in this case they are some of those alleged in the indictment. In this case, if the acts of the Directors in raising the price of the stock was intended to give, and was reasonably calculated to give the impression that the company's raise in the price was justified by the company's assets, and if the raises were not so justified, the raises in price were false representations and pretenses, within the meaning of the law.

There has been considerable talk of the Treasury Stock in this case. The Court might say right here that several times it appears in the minutes of the company that the Defendants, as Directors, used that word in reference to the stock. There can be no play on the words here. If it was intended by the sale of this stock, by raising the price and sending out sales agents, that the impression was to be given to the buyer that the stock was company stock, and the company's money, that would sufficiently answer the allegation of the indictment that it was Treasury stock.

Now, Gentlemen of the Jury, a word about the evidence that you will look to in this case. Evidence is not only the oral statements of witnesses,

and writings, but it also is the presumptions and inferences, or your reason tells you ought to be drawn from the facts and circumstances of the case. Often such presumptions and inferences are proof of the most conclusive character. You have the power to look right through acts, statements and writings that are fair on their faces, and draw presumptions and inferences that such acts, statements and writings are unfair in their purpose. When the facts and circumstances, all taken together, satisfy your reasons that such presumptions and inferences ought to be drawn. For instance, in this case you must look at the condition of the company financially, at the progress it was making, and then read the raises of prices of stock, and infer what was the intent of the raises, the aim and the purpose. Acts viewed separately may appear innocent, but taken all together, and with a just inference, which your reason tells you ought to be drawn, they may show the guilt. In a case of this sort you will observe, the law says that any one who schemes to defraud, and, or who attempts to execute the scheme and uses the mails, is guilty of an offense. It is not necessary that any one should be actually defrauded. I think I can say in this case, the evidence shows that a scheme to defraud was entered into and the mails used to execute it, and that there were plenty of people defrauded. I think the evidence will show that clear enough. It is wholly immaterial whether anybody was defrauded or not. It is like when a man shoots at another, attempting to

kill him, he is put on trial for assault with intent to kill. Why, he is not justified and to be acquitted because he didn't succeed in doing the killing. So here, if there was a scheme to defraud, even though it did not work if they attempted to execute it, by the United States Mails they are guilty just the same. You can see the object is to protect the mails from being abused. Those who were actually defrauded, they have their own remedy. The offense is, of abusing the United States Mails by using them in trying and attempting to defraud some one. Also when they actually do defraud some one, it is no defense, as I have heretofore told you, that in an attempt to rob that the robbery was thwarted. It will be a question, of course, for you to consider, however, whether a scheme to defraud was entered into, whether it did not succeed, it is a circumstance that you have a right to have in mind. The Court will say to you that when they were selling shares of stock at \$30.00 per share, if the raise was not justified under the circumstances known to them, if they knew it and put out and accomplished the raise and put out the stock at that price, so as to persuade the buying public that the stock was worth that raise, why, having so sold some, they did succeed in the scheme to defraud. I will say to you that a share of stock in a corporation represents so much property of the corporation after the property has got into the Treasury of the Company. Of course, when the company is organized it may not have any property. It has a right to ask people to



come in and buy shares and pay for them and the money goes into the Treasury and every share represents just its proportion. If there are a thousand shares of stock in the company and ten thousand dollars in the Treasury, every share on its face would be worth \$10.00 actual value, as well as book value, yet, if the assets are not in the Treasury and, I mean, real assets and not fictitious ones, and the price is raised several times above these assets, you can see right away that the party who is buying the stock is not getting what he is paying for. Parties buy stock because they believe the property of the company justifies the price they pay for it.

As I have heretofore said to you, the Government need not prove all of the means that it has alleged in the indictment, but only enough of them to satisfy you that false and fraudulent representations, suggestions or promises were made, reasonably sufficient and calculated to deceive persons of ordinary understanding and prudence. So while you may consider all alleged, in so far as proven false or fraudulent, give special attention to the charge the plan was to falsely represent all stock being sold, and also that the price was increased without assets to justify the raise, was stock of the company. If you find that to be the fact, and that all this was done, ask yourselves whether this was done to create the impression that the selling price was warranted by the assets of the company, and would go to the company, so that the public would thereby be induced to buy the stock.



I think, Gentlemen of the Jury, considering the great amount of testimony in this case, that I would give my main attention to those two several items. Did they represent all the stock being sold to be the stock of the company, and that the money was to go to the company. Did they represent by their raising the price that the assets of the company justified the raise, and was that done knowingly with the purpose and intent to induce the public to buy when it otherwise would not have done. Was it reasonably calculated to induce them and therefrom determine whether the scheme alleged to defraud or to obtain money or property by false promises has been proven in this case?

You are instructed that the Defendant and each Defendant at the outset of the trial is presumed to be innocent. A Defendant at the outset of the trial is presumed to be innocent of all charges, or to put in any evidence at all upon the subject. In considering the testimony in the case, you must look at that testimony and view it in the light of that presumption of innocence which the law clothes every Defendant with, that he is innocent, and this is a presumption that abides with him throughout the trial of the case until the evidence convinces you to the contrary beyond a reasonable doubt. The Court charges you that the law presumes each Defendant innocent until the contrary is proven, and in case of a reasonable doubt, he is entitled to an acquittal.

You are further instructed that you cannot find any defendant guilty, unless from all the evidence

you believe him guilty beyond a reasonable doubt. The Court further charges you that a reasonable doubt is a doubt based on reason and which is reasonable, within your judgment, in view of all of the evidence. And if, after an impartial comparison and consideration of all of the evidence you can truthfully say that you have an abiding conviction of the guilt of any one or more or all of the defendants, such as you would be willing to act upon in the more weighty and important matters relating to your own affairs, then you must find such defendant or defendants guilty; however, if after an impartial comparison and consideration of all of the evidence, you can candidly say that you are not satisfied of the guilt of one or more of the defendants, you have a reasonable doubt, and you should find a verdict of not guilty as to such defendant or defendants.

Remember, it is incumbent upon the Government to prove a defendant guilty only beyond a reasonable doubt, not beyond all doubt, not beyond any doubt; because anything dependent upon human testimony is subject to some doubt. That is not a reasonable doubt, because if we did not act until we were absolutely certain, we would never act at all. There is nothing capable of absolute proof in a court of justice or anywhere else, except mathematical problems, and, perhaps, some of the subjects of science. You are not required to be absolutely certain, positive that the defendants are guilty before you should convict them. Moral certainty that is

required. If you are satisfied beyond a reasonable doubt after you have given a conscientious consideration of all the evidence in an endeavor to arrive at a verdict, if your conscience tells you that you are satisfied, that the defendant or defendants are guilty, then you have no longer a reasonable doubt, if at the same time your conscience tells you it is not reasonable to doubt. Remember, in every case the defendant must be proven guilty only beyond a reasonable doubt.

Your are instructed that in criminal cases, even where the evidence is so strong that it demonstrates the probability of the guilt of the party accused, still, if it fails to establish his guilt beyond a reasonable doubt, one or more of the defendants, in manner and form as charged in the indictment, then it is the duty of the jury to acquit any Defendant or Defendants as to whose guilt they entertain such reasonable doubts.

Your are instructed that more probabilities are not sufficient to warrant conviction; nor is it sufficient that the greater weight or preponderance of the evidence supports the allegations of the indictment; nor is it sufficient that upon the doctrine of chances, it is more probable that the Defendant is guilty. To warrant the conviction of a Defendant, is must be proven to your satisfaction, when all the evidence in the case and the inference reasonably to be drawn therefrom are considered together, that he is guilty as charged, but only beyond a reasonable doubt.

Gentlemen of the jury, before we come a very slight review of his evidence, you will remember that there are seven Defendants on trial. At one time there were ten, and repeatedly, during the course of the trial, evidence was offered of the acts of one of them, or his declarations or his letters and other Defendants by their counsel objecting to the reception of that evidence because it could not affect their clients, they not having done the act or written the letter and the Court invariably overruled those objections and said that the evidence was bound to go in since it might affect one, but when it came to the conclusion of the trial and the instructions of the Court that then the Court could be asked to limit the evidence insofar as it ought to be properly considered against only one Defendant in the case. You will remember on occasions that the Counsel asked the Court to then and there instruct you that you should not consider that evidence against their client, and the Court again said that the further progress of the case might show that it was material and competent against their client, and that you would not be so instructed now, but that at the conclusion of the case when you were finally instructed the Court would instruct you in reference to the evidence insofar as it was not competent or material against any Defendant. So that the Court now instructs you and cautions you to have it well in mind in considering all the evidence in this case, that no one of the defendants is responsible, nor can be bound or affected by the state-



ments or declarations, or the acts or letters, or advertising made or done by other Defendants unless you have first found that at the time any defendant made any such declaration or statement or performed any such act or wrote any such letter or circular, or issued any such advertising, there already existed the scheme to defraud heretofore defined to you between the Defendant whose declarations or acts or letters were put in evidence, and someone or more of the Defendants, and you will bear in mind that the acts or declarations of one Defendant must be considered only against himself, and against any other one or more of the Defendants with whom he then had, as I have defined to you, as agreement or understanding in a scheme to defraud.

Insofar as the determination as to whether or not there was a scheme to defraud, or a conspiracy as I have defined them to you, you will not look to the acts and declarations of one defendant acting alone, and therefrom determine that someone or other of the defendants were involved in the scheme to defraud, or a conspiracy, you must look to the acts and declarations or letters, if any, for which, as I have defined it to you, they are all responsible. Look to the condition of the company at the time anyone of the defendants became connected with it; look to the relation of the Defendants to the company, and toward and with each other; look to the extent that they exercised management, direction and control; look to the acts that they performed as an executive committee, and as a board of directors, determine



and look to what was their intent, their aim, their object and their purpose. And then if you find therefrom, and from subsequent acts, which you find it reasonable to infer were intended by them, or acting in concert, or which were the probable and ordinary consequences of their joint acts, as I have stated to you, determine whether or not a scheme to defraud had been formed expressly or by implication, or whether a tacit understanding existed to defraud and deceive the public in buying this stock, and determine between which of the defendants, if less than all the scheme or plan thus existed. And if you find that a scheme or artifice or plan to defraud existed between any, or all of the defendants, then any act done subsequently, or statement made or letter written by any one of them to further that scheme or conspiracy, ~~to~~ to execute it, or to contribute to its continuation, or success, is the act, the declaration, the letter of each of them engaged in the scheme, or conspiracy, and to be determined as evidence properly to be considered in relation to each of those who was a party to the scheme or plan, or conspiracy.

So that you may be able to discriminate between the evidence that you are entitled to consider in determining whether the scheme or plan to defraud or the conspiracy was entered into, and by whom, the Court will state to you what the evidence tends to show, that the Defendants show in respect to the time when the several Defendants became connected with the company, or to each other. Now, Gentle-

men of the Jury, the Court said to you it would make indeed a very brief reference to this evidence. Look to the main points and treat them as straws if in your judgment they are such, that indicates in what direction the wind blew to use a term which we have in mind here. It seems that this company was formed and organized and prompted by the Defendant Sidebotham just before January 1, 1913. None of these other defendants at that time seemed to have been connected with it. Sidebotham proceed to the organization of the company, get the directors together, and he takes the contract to sell all the stock to net the company \$10.00, its par value. That of itself, of course, as I have said to you, was innocent enough. The company had a right to give him that contract. After it had run along a little while, I think it was in May, the Company, the Board of Directors without any assets in the Treasury the price of the stock from Ten to Fifteen Dollars. Now, they didn't say in their minutes what it was for. One of the questions for you in that connection will be whether it was already in Sidebotham's mind, and was it intended that that should go out to the public in order to create the impression, a false impression, that the assets of the company warranted that raise, and thereby induced people to buy stock. They went a little further. Some stock apparently was sold. It seems that Alderson and Rae had options practically from the beginning. They called them subscriptions, but the name counts for nothing, they were really options

because they had a right to pay for it or refuse to pay for it, and cancel their subscription.

Their taking those options was lawful enough and innocent, as I explained to you, but the question will always be further on whether they were taken for a purpose, and whether they furnished an incentive and a motive for a scheme to defraud. About, in August, I think it was, I think the Defendant Bertoglio had already received an option on a considerable amount of stock. It is said that he had purchased a considerable amount of it and paid for it. I don't remember the evidence. Is that it?

By MR. WHEELER: Yes, your Honor.

In fact, it does look as if the Defendant Bertoglio was the only one who put any substantial money into the concern. He paid a Thousand Dollars for his option. The others paid, some of them, some small amount. I think Sidebotham paid Twenty-five Dollars. If the Court mistakes evidence Counsel can interrupt him.

By MR. GALEN: With reference to Mr. Alderson, your Honor said he had an option. The facts are that he had given a note for his subscription.

By THE COURT: Yes, the Court has said that. You may take an exception to that later on.

As I said, labels don't count for anything. He had a subscription and gave his note, but he had a right to refuse to pay his note and cancel the subscription, and to all intents and purposes that ends the option. Defendant Rae had not given a note, but he had the same privilege to pay for his stock

and take it up or refuse to pay for it. In August Defendant Bertoglio was elected a director. There is nothing to show that the Defendant Bertoglio accepted the offer or acted at that time, and he seemed not to have done anything or appeared as a director until the meeting in March, 1914, at Great Falls, along about the middle of 1913. But the Defendant Wilmot appears to have received an option. That seems to be his first appearance in the case, and, I think, in August of that year, that he was elected a director, and to the Executive Committee, but it does not appear from the evidence that he acted at that time.

Now, in August, 1913, the stock of the company again was raised from Fifteen to Twenty Dollars a share. The record does not state why it was done, and again it is a question for you to consider whether it is a fair inference, or whether it is not a fair inference when you take all the evidence together that the raise was made without any assets to warrant it, without the condition of the company justifying it, and for the purpose of creating a false impression to the buying public that it was justified, that the condition of the company, so as to induce the public to buy at the raised price because, Gentlemen of the Jury, as every one familiar with human nature knows men are always to buy stocks when they are going up. They always want to sell when they are beginning to go down, so it is a very effective method of inducing people to buy stock to be constantly raising the price as though the assets of



the company, which the stock represents, warranted it. It is for you to determine whether that was the purpose in this case of raising the price. Now, when that price was raised, it would seem that only Sidebotham, the Defendant Sidebotham was active director. It is apparent that the company fell into difficulties. It had some assets when it raised the price in 1913, to Twenty Dollars. I think the book value was given at Four Dollars, or the actual value of Four Dollars and Twenty-seven cents a share, and the stock was raised to Twenty Dollars. There is some talk of other assets, options, and such like, and subscriptions. Now, an option that somebody had to buy stock from this Company was not an asset, it could have no value to the Company. If two of you are engaged in business and have One Hundred Thousand Dollars invested, and a certain man comes to you, gets an option that if he wants to can go in with you by paying One Hundred Thousand Dollars, it does not make your concern a Two Hundred Thousand Dollar concern; you wouldn't be justified in advertising that you have now Two Hundred Thousand Dollars in assets because somebody might possibly exercise an option and pay you a Hundred Thousand Dollars, not at all.

SO THAT as a matter of law can see no value as assets in these options. Now it is true too, when the company made its report and sent out to the world what its assets were, it said stock options, contracts and subscriptions, something to that effect, in money, it did mention the options in there, but the



question will be for you to determine whether the design that they had options which might or might not be exercised whether the design was to create the impression with the investing public, that they had five hundred thousand dollars or more, whatever it was, or real assets, giving value to the stock, whether they had in mind that that word "OPTION" might be misleading, and not attract very much attention among so many other statements; whether they had in mind that the possible purchaser of the stock, the five hundred thousand dollars emblazoned on their literature would not attract more attention, and impress more than the little word "option," printed somewhere else in the literature. THAT again is a matter for you to determine. Again, as I say, you can look through the literature on its face to arrive at the intent and purport. It is for you to determine that.

The company fell into difficulties, and in March, 1914, there was a meeting and some sort of arbitration by which Alderson and Rae were elected directors. Bertoglio was again elected as a director, so was Sidebotham, but I am not so sure that Wilmot was at that time.

By MR. WHEELER: Yes.

By THE COURT: Do you understand it so.

By JUDGE SMITH: I don't recall it, your Honor.

By THE COURT: Any way, let it stand at that. This board of directors was elected in March, 1914. They had a meeting of the executive committee.

Sidebotham and Alderson were there, and Rae. Bertoglio seemed to have been at that meeting of directors. He was not at any subsequent meeting until one along in September; later the executive committee met, and made some declaration, and had it entered in the minutes that a surplus had been created by stock sold by Sidebotham in excess of ten dollars a share. They arraigned for literature to be secured, advertising matter or letters of prominent stockholders to be sent out, a part was for the company, and a part was for the fiscal agents, who were Sidebotham and Wilmot; and a few days later, the committee or the directors themselves met, and then the defendant Speer was there, but Rae was no longer there, nor Bertoglio, defendant Speer, Alderson and Sidebotham, and they went over the executive committee actions and approved them. Things went along, advertising was issued, as you know, letters were written, circulars sent out, stock was sold, subscriptions made out, and the methods by which the stock was held; representations made by agents have been told to you; not only were representations made by both Sidebotham and Wilmot. For instance, the Thompsons, Guy Thompson told you that Sidebotham came there after Rainwater had been there, and brought Wilmot with him, and introduced him as State Treasurer Rae, who was under a heavy bond, and could not be dishonest, that was Wilmot's language. That was after that, and that was after that and not before that, as counsel argued to you. Now, after

that the Guy Thompsons bought their stock of Sidebotham, and the party took fifty dollars in trade, goods, that is charged in the indictment. You have to take that in mind, whether these defendants, or those of them who were responsible. The fiscal agents in this instance were so anxious to sell that stock for anything they could get, that they would take goods, or was it a fair transaction in which they believed they were getting value for value for the sale of the stock. You remember the testimony of Urbanowioz, two letters in this case are charged to have been sent to him; that Sidebotham and Wilmot came to his place in Missoula; that Sidebotham did most of the talking, and Wilmot was there at that time, at that time were members of the board of directors, and his partner as fiscal agent, said that the stock would earn and pay at least eight per cent by August, 1914, that as I remember it, was early in 1914, that that sale was made. Now, as I said before, a mere promise might not be false and fraudulent, but if a man who is in a position to know, whether the conditions will warrant his making that sort of a statement, knows that they will not warrant it, and yet he intentionally makes it for the purpose of inducing some one to deal with him, and by buying this stock, and it is a false and fraudulent representation within the meaning of the law involved in this case. Urbanowicz further said they told him of all the prominent men interested in the company.

Now, gentlemen of the jury, there were many

prominent men interested in the company. There was truth in that. The question for you is whether it was not made use of in connection with false statements to give credence to false statements and representations made, if they were made, and in order to more freely induce people to buy the stock. You remember that several witnesses said that they were induced to buy because of the prominent men who were represented to be interested in this company, and to some extent were interestd. You will remember that Urbanowicz stated they left him some advertising literature, and they told him that the stock was good, and the company good; because the stock was certified to by the Secretary of State. Now, that is a meaningless statement, there is no sense in it. The Secretary of State never certifies stock. The question is for you, did Urbanowicz get it twisted, or did they actually get him that, relying upon his assumed ignorance of corporations, and methods of issuing stock, these gentlemen representing a company. It is for you to say, because it certainly would have its effect. Here again, it is giving an appearance, if that representation was made, giving an appearance of some responsible state officials standing behind the stock, certifying to it. Now, after the board of directors had met in March, 1914, did all the defendants except the defendant Cort, and we will speak of her later on, on the board, except possibly Wilmot, they were all re-elected to the board again in August, 1914. Wilmot was elected a director at that time, and after they



elected a board of directors in August, 1914, the minutes show that they met here in Helena, and again raised the stock from twenty to thirty dollars. I think I am correct when I say the record given no reason for the raise. I am open to correction by any counsel, and the question again comes to you, that is fair on its face. You take in mind the condition of the company, and you have a right to take into consideration the directors managing the company, and directing its affairs, and know its condition when they took action affecting its finances.

And you ask yourselves in view of the condition of the company, whether that raise in the price was justified in the company's condition, and whether it was honestly done by them, or whether it was done by these defendants for the purpose of again creating an impression to the buying public, who they were soliciting to buy its stock, creating the impression that the assets were in the company, and justified that raise. That is one of the inferences that you must draw, and it is for you to determine. Much has been said in the argument, and, I think in the advertisement, that the books were open to inspection by any one. That again is fair on its face, but you want to bear in mind that they were selling stock, hundreds of miles from the office, where the books were. I don't believe that it is in evidence here that during the early part of the campaign, stock was sold to Great Falls residents. We don't know anything about that, because the witnesses that came here were practically from the four cor-



ners of the State. Ask yourself what effect it would have upon them that the books were open to inspection. Was it not to inspire confidence in them? Also ask yourselves whether it is likely or unlikely that any of those distant purchasers would come and investigate the books? Ask yourselves whether any of these defendants had not that in mind, that it would serve to create a good impression, and not likely that a distant purchaser, at least, would expose the situation that the books disclosed. You have also to have in mind Donald Arthur's report, as to the condition of those books in March, 1914, that he couldn't determine the actual condition of the company, but he made as accurate a report from those books at that time as he could. And ask yourselves whether the fact that the books were open is very much to the benefit of the defendant, or whether it is not. In view of all the facts and circumstances in this case.

In September, 1914, in Helena, the price of the stock was raised from twenty to thirty dollars. The records say Speer was there, Sidebotham was there, Wilmot, Alderson and Rae, and I think Bertoglio. That was the second time Bertoglio appeared in the case. Speer, the record says, was there. The district attorney in his opening statement here stated he expected to show that Speer was not there, and it is to be assumed that he knew what he was talking about, so you can consider it was to be assumed that he should make the proof, you ought to consider whether Speer was not there at that time when

that raise was made. Speer was present in March at the meeting, and had been elected, and had taken part in approving what the executive committee had done. After that things run along until the investigation by Riddiford. You saw Riddiford upon the stand, and heard his testimony, you observed his demeanor. It is for you to determine, of course, the credibility of all witnesses. In respect to his inability to bear the gaze of counsel, or others, it is a psychological truth that the human gaze is very compelling, and there are few men who will stand face to face very long, and gaze steadily in each others eyes, and it is not always, and not ordinarily even a confession of guilt, or guilty secrets. Men don't care to embarrass each other. One may have a feeling of humility in the presence of one who is his superior, when he looks upon one whom he regards as his superior, and he will allow his gaze to fall or shift before the gaze of the man with whom he is talking. You have a right to determine that for yourselves. That is your duty to determine, but in canvassing the testimony of Riddiford, as well as other witnesses, you ought to remember that there is no denial, or contradiction of anything that Riddiford said. He said nothing of very great importance except one thing, that was when Sidebotham and Wilmot and Speer and he were conversing together, Sidebotham or Wilmot, or both of them, because he said Speer didn't do much of the talking, and appeared to be there rather in the capacity of an attorney, he said they said to him that they

raised the price of the stock on the theory of a surplus to meet the high expense of selling stock in Montana, and that was the only way they could get more than twenty-five per cent commission was to option the stock to themselves at \$10 to \$15 and take the excess for which they sold it, and there, if there was any evil intent in making those raises, and putting the stock out as they did, have in mind Riddiford's testimony as to what at least three of them admitted to him, or at least two admitted and the third stood by and did not dissent from it. After Riddiford's examination, the directors again met, and they cancelled all options, and all contracts, and gave out new contracts to the fiscal agents, Side-Botham & Wilmot, to sell for thirty dollars, taking 33 1/3%. Like all the other options, they gave, that is innocent enough in itself. If the scheme to defraud was committed, it had been devised and agreed upon long before that time, and was in process merely of execution.

Nothing is to be gained, that the Court can see, but it is for you to determine finally by saying that these men tried to meet Riddiford's suggestions. It is to be expected that the defendants, whether they were innocent or guilty, because it stands any one in hand to try in a business enterprise to get along amicable with the government. The government had many inspectors for good purposes, all their purposes are good, to see that the laws are obeyed. The laws are made to be obeyed. At that meeting, I think, Bertoglio, defendant Bertoglio appeared

for the last time. At that time he gave up the option. It must be said, as I said before, that some of these defendants had considerable more apparently to do with the concern than any others. It is for you to determine how many of them are culpable. The stock was sold, in process of being sold after this meeting of January, 1915. There were several things that occurred; after that were letters that were mailed, the letters were mailed from the company's office, March 11th, 1915, exhibits 111 and 114, wherein it was set out, I don't remember who signed that letter, if you have it handy you might look at it, wherein it was set out, that the raise in the price of the stock from ten to thirty dollars, the idea was an enormous surplus fund, that word "enormous" appears in that letter, and that the stockholders would get dividends on the surplus, too. That was a letter to Burgess, as I remember it. You remember that Burgess had bought some stock. Burgess tells you about a remark that Alderson made. You will remember that remark that Alderson made in reference to Sidebotham is not evidence, as to Sidebotham, and the remark was not introduced for that purpose, it was simply introduced to show that if there was anything wrong Alderson had knowledge of it.

Furthermore, in August, 1915, the company made a report that its surplus and undivided profits were over \$17,000. You have heard a good deal of evidence of experts, and others, how the company was figuring the surplus or profits at that



time. It is for you to say whether the company and the defendants, the company can only act by its directors or agents, whether they honestly believed they had a surplus, if they did, no matter if their bookkeeping was bad, that is not a guilty circumstance, and again if from what they knew of the company, it didn't have a real volume of surplus and undivided profits of the amount of seventeen thousand dollars, you have a right to ask yourselves if that was sent out to further impress the investing public with the idea of the soundness of the company, and their desirability of becoming associated with them.

In September, 1914, Mannis testified that Sidebotham and Wilmot told him that his not ought to carry interest from the beginning when he bought the stock, because it would be more than offset by the dividend which would be paid. Again if it was only a promise, an honest promise, an honest expectation, it is not a guilty circumstance, if from their knowledge of the company at that time, they knew they could not be in a position to pay dividends from the beginning, you may consider it in determining the guilt of innocence of those defendants.

In November, 1914, the witness Thomas testified that she bought five shares in Deer Lodge at thirty dollars (\$30.00) a share, and that a little later, Sidebotham sold her twenty shares more in Avon at thirty dollars (\$30.00) a share, and he guaranteed her eight to thirty per cent on her money, so she says. You must remember, gentlemen of the jury, the



credibility of the witnesses is for you. You have a right always to determine for yourself the accuracy of the witnesses' recollection and statements.

In September, 1914, Wiggins testified that Wilmot stopped him on the road, and sold him ten shares at thirty dollars (\$30.00), and told him the company had been paying dividends the past year at the rate of eight per cent, and he would guarantee that this year when Wiggins did buy, that it would be thirty percent, or better. No one had denied Wiggins' testimony, and there it stands for your consideration.

The defendant Cort was not a director in the company, and had no part in the forming, or took no part in forming the policy of the company, or in managing its affairs, but it is evidence that she wrote and mailed, or had mailed, many of the letters and circulars to the stockholders to give them information, or to pacify those that were complaining, or to collect money due on stock. Now, if there was a scheme to defraud as alleged, and although she didn't have any part in making the scheme, if she did not, yet if you find that she had knowledge of the scheme to defraud, and then having it in mind and intending to further it, wrote these letters and circulars that have been mailed, then she would be guilty if there was such a scheme, because a person who knows that another is perpetrating a fraud, or committing an act that is unlawful, if he joins in and helps him, whether he is employed for hire, or not, whether he gets anything out of it, or

not, he and she becomes an accomplice, equally guilty with the party who designs the offense.

If, however, the defendant Cort did not know of the scheme to defraud, or plan to defraud, did not know that the public were to be induced by false or fraudulent representations or promises to buy the company's stock, if they were to be so induced, when she wrote the letters, and circulars, then she is not guilty, even though in her employment did write and mail letters to people that would aid in carrying out the scheme, if she did so without knowledge or at the time had forgotten, when in the regular course of her employment she wrote and mailed letters or circulars, she would not be guilty of aiding in any way, in committing the offense.

You will understand that no one can be found guilty without any intent to do the deed that makes up the offense; and if a person had no knowledge that another intends to commit a crime, because one helps them cannot make them guilty.

If A intends to go down into the valley and kill a man, and he hires B to haul him down there, and B does not know what he is going for, B is not guilty, but if A says to B, I am going to kill a man, and I want you to take me down, why then immediately B becomes as guilty as A.

So in this case, as to the defendant Cort, you have a right to remember her position, she was a book-keeper from 1913 to August, 1914, when she became assistant secretary and treasurer. It is true that she had access to those books, was herself the book-

keeper. It is for you to say whether through those books she discovered that there was a scheme to defraud. It is for you to say whether by the tone of the letters she wrote, you will infer she knew of the scheme to defraud. As was said by the prosecutor in his opening statement, that the defendant Cort said on one occasion, that any one was a sucker who would buy the stock. You must remember that was never proven, and it is not evidence. It is probable that counsel forgot it, we will not say that we can excuse him. He made a statement and did not prove it. There is no evidence of such statement ever being made by the defendant Cort. You have a right to remember that she is a woman. Now sex does not excuse any one from committing a crime, but there is a difference between women and men in the matter of crime, and in guilty intent, and forming guilty intent, as every text writer on criminology has explained. We all know that men act from reason and judgment; women act more from emotion and mere intuition, but at the same time if they do act with knowledge and guilty intent, still they are guilty; and you have a right to have that in mind how much this defendant would gather from the books in keeping them as she did, and having access to the books, whether or not she too is guilty in this case.

You are instructed that the Northwestern Trustee Company is not on trial, and neither are its officers as such, they are being tried as men, and not as officers of the company, and you are advised that

the result of this trial can have no possible effect upon any person or persons who are indebted to the company because of stock subscriptions, no matter by whom obtained.

The liability of such persons upon their indebtedness, whether evidenced by notes, judgments, or otherwise, can in no wise be effected by your verdict.

You are instructed that the options and subscriptions, as I have heretofore explained to you, were legal in themselves, and the board of directors had no right to cancel or annul them without the consent of the holders thereof. That you will remember, gentlemen of the jury, what is being tried is just a scheme to defraud the general public into buying the stock.

There is a matter in reference to the governor. An option is a mere privilege to buy stock, and as a matter of law does not carry with it the right to vote such stock, either personally or by proxy, and in this case if you find from the evidence that Governor Stewart, after Sidebotham had left with him a certificate of stock, and before the Governor returned the same, gave a proxy to vote such stock at a stockholders meeting, and it seems that is the fact, then you should take the fact into consideration, in determining whether or not Sidebotham was justified in considering the Governor a stockholder. You remember that the Governor had an option for stock; that the stock was actually issued and handed to him, and thereupon it was advertised; they use



that as an advertisement. You must assume that Sidebotham, he is one of the defendants here, promoting the company, was advertising that the governor was a stockholder. On the face of the books the governor was a stockholder, but you have a right to look right through the arrangement to see what it was, to determine whether or not you find that although the governor had that stock it was only an option, he had not paid for it, he had not made his mind whether he was going to. Having all that in mind, you determine what was the motive and the purpose of the defendant Sidebotham in advertising the governor as a stockholder.

Gentlemen of the jury you are the exclusive judges of the credibility of witnesses, and the weight to be given any and all evidence. You are to determine what facts are proven, and what inferences you draw from the facts and circumstances of the case. Remember that all witnesses, as a matter of law, are presumed to speak the truth, and where they are not discredited and your judgment and reason based on the facts and circumstances, you ought to follow that presumption. These witnesses practically stand before you uncontradicted, and unless you see something in their motive, or interest, to discredit them, you should not endeavor to discredit the witness arbitrarily. There must be something to satisfy your reason why they should be discredited.

So in determining this case, you make up your minds and judgment as you do in any concern of



your own outside of the jury box. You know how to determine and make up your judgment in your business, you know what is reasonable and what is unreasonable, what is true and what is not true; you know what inferences to draw, what conclusions to arrive at in your business, the processes of your mind are just the same here and you arrive at it just the same here. You should bear in mind that neither sympathy nor prejudice should influence you here. Both sympathy and prejudice are enemies of justice, and justice alone is what is to be arrived at here. The fact whether or not a defendant has friends or relatives it is too late to bring that to your attention. If he is not guilty he ought to have thought of that before he committed the offense. He had more to bind him to the observance of the laws of the community. It seems to me that a man; in spite of all the good influences with which he is surrounded commits an offense and jeopardizes the affections of his friends and relatives, to his own safety, he has little ground to come to a jury and ask for sympathy. Furthermore, you must not allow prejudice to creep in. The fact that a great many people of this state have lost money in this corporation, or didn't get value for all they paid into it, I don't think that can be doubted from this evidence, that is not to prejudice you against these defendants and affect your judgment in considering the testimony. Their rights they must seek to have protected elsewhere.

When you retire to your jury room, you will se-

lect one of your number foreman, who will sign the verdict. It takes twelve of your number to arrive at a verdict in this case.

There was one matter I said I would call to your attention, and that is this, gentlemen of the jury: The only written instruction that the Court gives to you, gentlemen of the jury, is sufficient data that you may know what counts are now before you for consideration, and what counts you will as matters of law you will acquit the defendant of, and in addition a renewed caution in the matter of certain evidence in the case.

You will acquit the defendants Rainwater, Tobin and White of any and all of the charges in the indictment, you will acquit defendants Alderson, Bertoglio, Cort, Rae, Speer, Sidebotham and Wilmot of counts one, two, three, four, five and ten, and will take into consideration only in respect to these last seven named defendants, counts six, seven, eight, nine and eleven, and determine whether or not said defendants, or any of them, be guilty of any or all of the last mentioned five counts. Dependent upon your judgment from the facts and circumstances in evidence, and the law as given to you by the Court, you may convict one or more of these defendants of any or all of the last mentioned five counts, or you may acquit any one or more or all of the defendants of any one or all of the said counts.

Dependent upon your view of what is the proper verdict to render in accordance with the law and

the evidence, you might convict only one of the defendants, or any one of them, of the sixth, seventh, eighth and ninth counts, or any one of them; but when it comes to a consideration of the eleventh count, you are bound to convict at least two of the defendants of that count, or you bound to acquit them all, and the reason for this distinction is that one person can commit the crime charged in the sixth, seven and eighth and ninth counts, but it takes two persons acting by agreement, express or implied upon an understanding express or implied; in brief, two persons in combination to commit the crime, conspiracy, charged in the eleventh count.

You will remember that you are not to compromise by singling out arbitrarily one or more defendants, either in conviction or acquittal, and thus distinguish them from other defendants; but in the case of each defendant you will remember that your oath and duty is, and the law requires that you, a true verdict render in accordance with the law and evidence.

The Court repeats in writing the caution heretofore orally given to you by the Court, you will bear in mind that during the trial a great deal of evidence was introduced of the statements, declarations, acts, letters or circulars of one or more of the defendants, and you will remember that to the admission of such evidence, the defendants, other than the one who was said to have made the statements, declarations, or written the letter, or responsible for the circulars, objected to its admission in that

their client could not be bound by the declarations or acts of another, and in instances they asked the court to then and there so instruct you. You will remember that the court repeatedly overruled the objection, and stated that the only way to take advantage of such a condition of the evidence was for him, against whom it might not be competent evidence to ask that you be so instructed when the court finally instructed you at the conclusion of the trial, and during the trial the court refused to then and there so instruct you, stating that it would so instruct you in the final instructions at the conclusion of the trial, and the court now again instructs you, and cautions you to have it well in mind in considering all the evidence in this case, that no one of these defendants is responsible, or can be bound or affected by the statements or declarations, or the acts or letters or advertising made or done by such other defendants unless you have first found that at the time any defendant made any such declaration, or performed any such acts, or wrote any such circulars, or issued any such advertising, there already existed the scheme to defraud heretofore defined to you between the defendant against whose declarations or acts or letters were put in evidence, and some one or more of the other defendants. And you will bear in mind that the acts or declarations, of one defendant must be considered only against himself, and any other one or more of the defendants with whom he then had, as I have defined to



you, an agreement or understanding in a scheme to defraud.

The data that I said I would give you is also attached to this instruction, and that is this further data.

That the evidence tends to show that the defendant Sidebotham had management, direction and control of the affairs of the company involved from the beginning.

That the evidence tends to show that the defendant Wilmot was elected a director and on the executive committee October the 10th, 1913, and thereafter acted as such.

That the evidence tends to show that the defendant Bertoglio was elected director about August 13th, 1913.

That the defendant tends to show that the defendant Alderson was elected a director, and to the executive committee about March 19th, 1914, and thereafter acted as such, also becoming president about August the 12th, 1914.

That the evidence tends to show that the defendant Rae was elected director and treasurer about March 19th, 1914, and thereafter acted as such.

That the evidence tends to show that the defendant Speer was elected a director about March 19th, 1914, and thereafter acted as such.

That the evidence tends to show that the defendant Cort was bookkeeper for the company during the latter part of 1913 and until August 12th, 1914, when she became assistant secretary and treasur-



er of the company, thereafter acted as such. These dates will enable you, in view of this instruction of the court, to determine who will be affected by the acts and declarations or letters of any defendant at the time said act, declarations or letters were done, made or written. You will bear in mind that all of any defendant's acts, declarations or letters are admissible, and to be considered in respect to him.

You will remember, gentlemen of the jury, that you are to have in mind all the instructions given to you by the court, but to have especially in mind this written instruction in the matter of discriminating in consideration of the evidence.

In the matter of the verdict, gentlemen of the jury, the Court has a single verdict, and there are blanks for you to fill in so far as the case is now before you in respect to every defendant and every count in the indictment and you be careful to see that you fill those blanks correctly with guilty or not guilty, dependent upon what your judgment is.

When the Court excuses you, he will be here at eight o'clock, at any time you desire further instructions from the Court you can ask for them, and if you agree on a verdict during the night, you are at liberty to see without doubt that the verdict is properly filled out and that you all agree on it, let the foreman sign it, put it in your pocket, seal it, and you can disperse and go to your homes, keeping to yourselves the conclusion that you have arrived on. If you do not come to an agreement during the night, the Marshall will find lodging for

you. You will remember to separate unless you have agreed upon all the counts in respect to all the defendants. Are there any exceptions to the charge?

By JUDGE SMITH: Miss Cort informs that she didn't go there until May, 1914.

By THE COURT: Well, I wouldn't be surprised if that is correct. Let it appear that in May, 1914, that Miss Cort became bookkeeper for the company and was elected assistant-secretary and treasurer as I have heretofore indicated. The Court will make correction in the instruction. Any further exceptions.

By JUDGE SMITH: On behalf of the defendant Wilmot, your Honor commented upon the fact that he didn't go on the witness stand.

By THE COURT: No, I did not, and you are calling attention to it right now. The Court said there was no denial of certain statements, it has not made any statement of that kind.

By JUDGE SMITH: I except to the remarks of the Court for the reason that it is a violation of the constitutional rights of the defendant. He is not obliged to go on the witness stand.

By THE COURT: If the Court made the comment, the Court will say nothing further than it has been asked to say. The statement that the Court has made, of course, is in the record, and your exception is there. If it is any benefit to you, of course, you are entitled to it and you will have it.

Any further exceptions?

Apparently there are none. Swear the bailiffs.

That from time to time orders were made by the Judge of the above entitled court extending the time within which the defendants should serve upon the plaintiff a draft of their proposed bill of exceptions in said action and that by the last order so made the time was so extended to and including the 5th day of April, 1917, within which the defendants should serve their draft of said proposed bill of exceptions upon the plaintiff, and now within the time specified by said order the defendants present this their proposed draft of the bill of exceptions herein and ask that the same be signed settled and allowed by the above entitled court as a true bill of exceptions herein.

WELLINGTON D. RANKIN,  
Attorney for Defendants R. R. Sidebotham and J.  
G. G. Wilmot.

Service of the foregoing draft of the defendants' proposed bill of exceptions and receipt of copy thereof acknowledged this 5th day of April, 1917.

B. K. WHEELER,  
United States District Attorney.

It is hereby stipulated and agreed that the foregoing is a full, true and correct bill of exceptions herein and the plaintiff hereby <sup>consents that</sup> ~~waives the right granted by the rules of the court herein to propose amendments to the foregoing draft of the bill of exceptions herein.~~  
*the same may be settled by the court as and for a*

B. K. WHEELER,  
United States District Attorney.

UNITED STATES OF AMERICA, } ss.  
District of Montana.

I, George M. Bourquin, Judge of the District Court of the United States, in and for the District of Montana, and the Judge before whom the foregoing entitled action was tried, do hereby certify that the foregoing bill of exceptions is a full, true and correct bill of exceptions in the above entitled cause, and the same is hereby signed, settled and allowed by me as a full, true and correct bill of exceptions herein.

Dated this 30th day of April, 1917.

BOURQUIN,

Judge of the United States District Court, in and for the District of Montana.

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That thereafter and on the 27th day of January, 1917, a verdict was filed herein, which is in words and figures as follows, to-wit:

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(TITLE OF COURT AND CAUSE.)

VERDICT.

We, the jury in the above entitled cause, find the defendants, W. W. White, C. W. Tobin and C. A. Rainwater, not guilty, as charged in the indictments herein;

We, the said jury in the above entitled cause, do further find the defendants, A. M. Alderson, W. C. Rae, R. R. Sidebotham, J. G. G. Wilmot, J. W. Speer, D. G. Bertoglio and M. A. Cort, not guilty,



as charged in counts one, two, three, four, five and ten of the indictment herein;

We, the said jury, do further find the defendant, A. M. Alderson, Not Guilty, as charged in the sixth count of the indictment herein;

We, the said jury, do further find the said defendant, A. M. Alderson, Not Guilty, as charged in the seventh count of the indictment herein;

We, the said jury, do further find the said defendant, A. M. Alderson, Not Guilty, as charged in the eighth count of the indictment herein;

We, the said jury, do further find the said defendant, A. M. Alderson, Not Guilty, as charged in the ninth count of the indictment herein;

We, the said jury, do further find the said defendant, A. M. Alderson, Not Guilty, as charged in the eleventh count of the indictment herein;

We, the said jury, do further find the defendant, W. C. Rae, Not Guilty, as charged in the sixth count of the indictment herein;

We, the said jury, do further find the defendant, W. C. Rae, Not Guilty, as charged in the seventh count of the indictment herein;

We, the said jury, do further find the defendant, W. C. Rae, Not Guilty, as charged in the eighth count of the indictment herein;

We, the said jury, do further find the defendant, W. C. Rae, Not Guilty, as charged in the ninth count of the indictment herein;

We, the said jury, do further find the defendant, W. C. Rae, Not Guilty, as charged in the eleventh



count of the indictment herein;

We, the said jury, do further find the defendant, R. R. Sidebotham, Guilty, as charged in the sixth count of the indictment herein;

We, the said jury, do further find the defendant, R. R. Sidebotham, Not Guilty, as charged in the seventh count of the indictment herein;

We, the said jury, do further find the defendant, R. R. Sidebotham, Not Guilty, as charged in the eighth count of the indictment herein;

We, the said jury, do further find the defendant, R. R. Sidebotham, Not Guilty, as charged in the ninth count of the indictment herein;

We, the said jury, do further find the defendant, R. R. Sidebotham, Not Guilty, as charged in the eleventh count of the indictment herein;

We, the said jury, do further find the defendant, J. G. G. Wilmot, Guilty, as charged in the sixth count of the indictment herein;

We, the said jury, do further find the defendant, J. G. G. Wilmot, Not Guilty, as charged in the seventh count of the indictment here;

We, the said jury, do further find the defendant, J. G. G. Wilmot, Not Guilty, as charged in the eighth count of the indictment herein;

We, the said jury, do further find the defendant, J. G. G. Wilmot, Not Guilty, as charged in the ninth count of the indictment herein;

We, the said jury, do further find the defendant, J. G. G. Wilmot, Not Guilty, as charged in the eleventh count of the indictment herein;

We, the said jury, do further find the defendant, D. G. Bertoglio, Not Guilty, as charged in the sixth count of the indictment herein;

We, the said jury, do further find the defendant, D. G. Bertoglio, Not Guilty, as charged in the seventh count of the indictment herein;

We, the said jury, do further find the defendant, D. G. Bertoglio, Not Guilty, as charged in the eighth count of the indictment herein;

We, the said jury, do further find the defendant, D. G. Bertoglio, Not Guilty, as charged in the ninth count of the indictment herein;

We, the said jury, do further find the defendant, D. G. Bertoglio, Not Guilty, as charged in the eleventh count of the indictment herein;

We, the said jury, do further find the defendant, J. W. Speer, Not Guilty, as charged in the sixth count of the indictment herein;

We, the said jury, do further find the defendant, J. W. Speer, Not Guilty, as charged in the seventh count of the indictment herein;

We, the said jury do further find the defendant, J. W. Speer, Not Guilty, as charged in the eighth count of the indictment herein;

We, the said jury do further find the defendant, J. W. Speer, Not Guilty, as charged in the ninth count of the indictment herein.

We, the said jury do further find the defendant, J. W. Speer, Not Guilty, as charged in the eleventh count of the indictment herein;

We, the said jury, do further find the defendant,

M. A. Cort, Not Guilty, as charged in the sixth count of the indictment herein;

We, the said jury, do further find the defendant, M. A. Cort, Not Guilty, as charged in the seventh count of the indictment herein;

We, the said jury, do further find the defendant, M. A. Cort, Not Guilty, as charged in the eighth count of the indictment herein;

We, the said jury, do further find the defendant, M. A. Cort, Not Guilty, as charged in the ninth count of the indictment herein;

We, the said jury, do further find the defendant, M. A. Cort, Not Guilty, as charged in the eleventh count of the indictment herein;

CHAS. E. BROWN.

Foreman.

Filed January 27, 1917.

That thereafter and on the 30th day of January, 1917, judgments against the defendants, J. G. G. Wilmot and R. R. Sidebotham were entered and filed herein, which are in words and figures as follows, to-wit:

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TITLE OF THE COURT AND CAUSE.

No. 2,842, Judgment.

The United States of America, Plaintiff, vs. J. G. G. Wilmot, Defendant.

The United States Attorney with the defendant, J. G. G. Wilmot, and his counsel present in court.

The said defendant was duly informed by the court of the nature of the charge against him, for

the offense of wilfully, unlawfully, knowingly, fraudulently and feloniously using the mails of the United States in furtherance of a scheme or artifice to defraud, theretofore devised, committed on the 2nd day of October, 1914, at Great Falls, in the State and District of Montana, as charged in the sixth count of the indictment herein; and of his indictment, arraignment and plea of not guilty, and of his trial and the verdict of the jury of guilty, as charged in said count six of said indictment.

And the defendant was then asked if he had any legal cause to show why judgment should not be pronounced against him, to which he replied that he had none, and no sufficient cause being shown or appearing to the court, thereupon the court rendered its judgment as follows, to-wit:

That whereas, the said defendant having been duly convicted in this court of the offense of wilfully, unlawfully, knowingly, fraudulently and feloniously using the mails of the United States in furtherance of a scheme or artifice to defraud, theretofore devised, committed on the 2nd day of October, 1914, at Great Falls, in the State and District of Montana, as charged in count six of the indictment herein;

It is therefore considered, ordered and adjudged that for said offense you, the said J. G. G. Wilmot, be confined and imprisoned in the United States penitentiary at Leavenworth, Kansas, at hard labor, for the term of Thirteen months, and that you pay the costs herein taxed at Four Thousand One

Hundred Twelve & no/100 Dollars, and be confined in said penitentiary until said costs are paid or you are otherwise discharged according to law.

Judgment rendered and entered this 30th day of January, 1917.

GEO. W. SPROULE,  
Clerk.

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TITLE OF THE COURT AND CAUSE.

No. 2,842, Judgment.

The United States of America, Plaintiff, vs. R. R. Sidebotham, Defendant.

The United States Attorney with the defendant, R. R. Sidebotham, and his counsel present in court.

The said defendant was duly informed by the court of the nature of the charge against him, for the offense of wilfully, unlawfully, knowingly, fraudulently and feloniously using the mails of the United States in furtherance of a scheme or artifice to defraud, theretofore devised, committed on the 2nd day of October, 1914, at Great Falls, in the State and District of Montana, as charged in the sixth count of the indictment herein; and of his indictment, arraignment and plea of not guilty, of his trial and the verdict of the jury of guilty, as charged in said count six of said indictment.

And the defendant was then asked if he had any legal cause to show why judgment should not be pronounced against him, to which he replied that he had none, and no sufficient cause being shown or appearing to the court, thereupon the court ren-



dered its judgment as follows, to-wit:

That whereas, the said defendant having been duly convicted in this court of the offense of wilfully, unlawfully, knowingly, fraudulently and felonously using the mails of the United States in furtherance of a scheme or artifice to defraud, theretofore devised, committed on the 2nd day of October, 1914, at Great Falls, in the State and District of Montana, as charged in count six of the indictment herein;

It is therefore considered, ordered and adjudged that for said offense you, the said R. R. Sidebotham, be confined and imprisoned in the United States penitentiary at Leavenworth, Kansas, at hard labor for the term of Thirteen months, and that you pay the costs herein taxed at Four Thousand One Hundred Twelve and no/100 Dollars, and be confined in said penitentiary until said costs are paid or you are otherwise discharged according to law.

Judgment rendered and entered this 30th day of January, 1917.

GEO. W. SPROULE,  
Clerk.

That thereafter and on the 1st day of February, 1917, notices of application for new trial on behalf of the defendants J. G. G. Wilmot and R. R. Sidebotham were filed herein, which are in words and figures as follows, to-wit:

TITLE OF THE COURT AND CAUSE.

To the Plaintiff above named, and to B. K. Wheeler, Esq., attorney for the Plaintiff:

YOU WILL PLEASE TAKE NOTICE: That the defendant J. G. G. Wilmot hereby petitions the above entitled court for an order setting aside the verdict of the jury in the above entitled cause as to the defendant J. G. G. Wilmot, and to grant him a new trial of said cause upon the following grounds and for the following causes materially affecting the substantial rights of the said defendant J. G. G. Wilmot, to-wit:

1. Irregularity in the proceedings of the court, by which the defendant J. G. G. Wilmot was prevented from having a fair trial.

2. Irregularity in the proceedings of the jury, by which the defendant J. G. G. Wilmot was prevented from having a fair trial.

3. Irregularity in the proceedings of the adverse party, by which the defendant J. G. G. Wilmot was prevented from having a fair trial.

4. Orders of the court and abuse of discretion by which the defendant J. G. G. Wilmot was prevented from having a fair trial.

5. Misconduct of the jury.

6. Accident and surprise which ordinary prudence could not have guarded against.

7. Newly discovered evidence material for the defendant J. G. G. Wilmot, which he could not with reasonable diligence have discovered, and prejudice at the trial.

8. Insufficiency of the evidence to justify the verdict.

9. Errors in law occurring at the trial.

Said application will be made and based upon the pleadings and papers on file herein and a bill of exceptions to be hereafter presented, served and filed, and upon the records and minutes of the court, and upon affidavits to be hereafter filed.

WELLINGTON D. RANKIN,  
Attorney for Defendant J. G. G. Wilmot.

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#### TITLE OF THE COURT AND CAUSE.

To the Plaintiff above named, and to B. K. Wheeler, Esq., attorney for the Plaintiff:

YOU WILL PLEASE TAKE NOTICE: That the defendant R. R. Sidebotham hereby petitions the above entitled court for an order setting aside the verdict of the jury in the above entitled cause as to the defendant R. R. Sidebotham, and to grant him a new trial of said cause upon the following grounds, and for the following causes materially affecting the substantial rights of the said defendant R. R. Sidebotham, to-wit:

1. Irregularity in the proceedings of the court, by which the defendant R. R. Sidebotham was prevented from having a fair trial.

2. Irregularity in the proceedings of the jury, by which the defendant R. R. Sidebotham was prevented from having a fair trial.

3. Irregularity in the proceedings of the adverse party by which the defendant R. R. Sidebotham was

prevented from having a fair trial.

4. Orders of the court and abuse of discretion by which the defendant R. R. Sidebotham was prevented from having a fair trial.

5. Misconduct of the jury.

6. Accident and surprise which ordinary prudence could not have guarded against.

7. Newly discovered evidence material for the defendant R. R. Sidebotham, which he could not with reasonable diligence have discovered, and prejudice at the trial.

8. Insufficiency of the evidence to justify the verdict.

9. Errors in law occurring at the trial.

Said application will be made and based upon the pleadings and papers on file herein and a bill of exceptions to be hereafter presented, served and filed, and upon the records and minutes of the court, and upon affidavits to be hereafter filed.

WELLINGTON D. RANKIN.

Attorney for defendant R. R. Sidebotham.

That thereafter and on the 12th day of May, 1917, a minute entry, denying the applications of the defendants J. G. G. Wilmot and R. R. Sidebotham for new trial, was filed herein, which is in words and figures as follows, to-wit:

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TITLE OF THE COURT AND CAUSE.

MINUTE ENTRY.

Defendants were charged with a number of offenses—using the mails to execute a scheme to de-

fraud. The first count recited the scheme, and the subsequent counts merely referred to it as the schemes in them involved, without otherwise setting it out in full. Defendants were convicted of one of the subsequent counts only. For a new trial the contention is that only one scheme being charged, acquittal of the first count, acquitted defendants of any such scheme, and hence they can not be lawfully convicted of that scheme merely referred to in the subsequent count on which was the conviction. The construction of the verdict must be consistent, and so it will be taken that the jury in passing upon the first count did not find that the scheme was not formed by defendants, but merely found that they did not use the mails to execute it, and that in passing upon the count upon which was conviction, the jury found the scheme was so formed and the mails used to execute it. Note that the gist of the offense is the use of the mails under certain conditions, viz., to execute a scheme to defraud. The scheme is but a condition, making the offense of misuse of the mails possible.

The only other ground urged for a new trial is that the Court instructed the jury there was no denial of a certain false representation made by defendants; that, contrary to law, this indirectly referred to defendants' failure to take the witness stand in their own behalf, for which a new trial ought to be had. Not conceded. The court must advise the jury of the state of the evidence, even



though it prompts them to notice the failure of defendants to testify.

To tell the jury a fact in proof is not denied, is not to tell it defendants did not testify; for they might testify and the fact remain undenied. Although criminal law and procedure seem more adapted to protect the criminal against society than to protect society against the criminal (originating when there were multitudes of political offenses, and courts were instruments of the rulers to punish and suppress their political opponents and now a mistaken survival thereof) it is believed the ancient rules do not stamp said instruction as an error requiring a new trial. Denied.

BOURQUIN, J.

That thereafter and on the 12th day of May, 1917, a petition for writ of error was filed herein, which is in words and figures as follows, to-wit:

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TITLE OF THE COURT AND CAUSE.

PETITION FOR WRIT OF ERROR.

Come now the defendants R. R. Sidebotham and J. G. G. Wilmot and petition this court for a writ of error herein, and say:

That on the 30th day of January, 1917, the above entitled court entered a judgment herein against the defendants, wherein the said defendants were sentenced to be confined and imprisoned in the United States Penitentiary at Leavenworth, Kansas, at hard labor for the term of thirteen (13) months, and to pay the costs taxed herein at Four

Thousand, One Hundred Twelve (\$4,112.00) Dollars for the alleged offense of wilfully, unlawfully, knowingly, fraudulently and feloniously using the mails of the United States in furtherance of a scheme or artifice to defraud in violation of Section 215 of the Penal Code of the United States of 1910; that in said judgment and the proceedings had prior thereto in said cause, certain errors were committed to the prejudice of these defendants, all of which will more fully appear from the assignment of errors which is filed with this petition.

WHEREFORE, these defendants pray that a writ of error may issue in their behalf out of the United States Circuit Court of Appeals, for the Ninth Circuit, for the correction of the errors so complained of and that a transcript of the record, proceedings and papers in this case duly authenticated, may be sent to the United States Circuit Court of Appeals, for the Ninth Circuit, in the City of San Francisco, State of California.

WELLINGTON D. RANKIN,  
Attorney for Defendants R. R. Sidebotham and J.  
G. G. Wilmot.

That on said 12th day of May, 1917, an order allowing writ of error was filed herein, which is in words and figures as follows, to-wit:

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TITLE OF THE COURT AND CAUSE.

ORDER ALLOWING WRIT OF ERROR.

On this 12th day of May, 1917, the defendants R. R. Sidebotham and J. G. G. Wilmot by their attor-

ney file herein and present to the court their petition praying for the allowance of a writ of error and an assignment of errors intended to be urged by them, and praying also that a transcript of the record, proceedings and papers upon which the judgment herein was rendered, duly authenticated may be presented to the United States Circuit Court of Appeals, Ninth Circuit, and that such other and further proceedings may be had as are meet and proper in the premises.

In consideration whereof the court does allow a writ of error, upon the defendants giving bond according to law in the sum of \$3,500.00 each, and that upon the due execution and approval of said bond, the same shall act as a supercedeas herein.

GEO. M. BOURQUIN,

Judge of the United States District Court, in and for the District of Montana.

That on said 12th day of May, 1917, an assignment of errors was filed herein, which is in words and figures as follows, to-wit:

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#### TITLE OF THE COURT AND CAUSE.

#### ASSIGNMENT OF ERRORS.

Come now the defendants R. R. Sidebotham and J. G. G. Wilmot by their attorney and hereby make and file the following assignment of errors upon which said defendants will rely, as follows, to-wit:

#### I.

The court erred in denying the motion of the defendants R. R. Sidebotham and J. G. G. Wilmot for

change of place of trial of the above entitled action.

II.

The court erred in denying the motion of the defendants R. R. Sidebotham and J. G. G. Wilmot for a separate trial of the above entitled action.

III.

The court erred in permitting the introduction of any testimony in this case for the reason that the indictment does not state facts sufficient to constitute a public offense.

IV.

The court erred in denying the motion of these defendants requiring the United States District Attorney to make an election between the eleventh count of the indictment and the other remaining counts upon the ground of duplicity.

V.

The court erred in denying the motion of the defendants R. R. Sidebotham and J. G. G. Wilmot for a directed verdict herein.

VI.

The court erred in pronouncing judgment against the defendants R. R. Sidebotham and J. G. G. Wilmot.

VII.

It was error on the part of the court to overrule the objection to the following question:

Q. And what business did you have with him?

A. When Mr. Meyer came to my house, he came there to sell some stock in the Northwestern Trustee Company. Just Mr. DeCelle and I were present

at the time that Mr. Meyers came. I had a conversation with Mr. Meyers about the stock, you know about buying stock of him. He said it was the best company in the Northwest and so many was into it, and all the business men, and he made it so clear to us that we thought it was all right. He said the company was to sell those bonds and build houses and one thing another. It was going to be so nice and prosperous that it couldn't fail, it was just perfectly honest, there would be nothing against it. He said, we would have 8 percent on all our stock as it would rise we would have the rise of the stock and then we could have 8 per cent. 8% interest on all once a year, I think. He stated the first payment would be made a year from the time we signed for the stock. He said the Governor, and Senator Gibson and most all the officials of the state were connected with the company.

#### VIII.

It was error on the part of the court to overrule the objection to the following question:

Q. Were any representations made by Mr. Sidebotham or Mr. Meyers in his presence, with reference to the organization of the company, its purposes, etc., as suggested? State what those representations were.

A. He said that he intended to form this company in the interest of building an apartment house and various kinds of buildings in the city of Great Falls and all the money that was secured from the sale of stock would go for that purpose. I believe



he told me the par value of the stock was fifteen dollars. The value of the stock was fifteen dollars.

IX.

It was error on the part of the court to overrule defendants' objection to the introduction in evidence of plaintiff's Exhibit 31, which reads as follows:

Northwestern Trustee Company.

Incorporated.

Authorized Capital Stock \$500,000.00.

SIDEBOTHAM & WILMOT, Sole Fiscal Agents.

General Offices, Lower Floor, Tod Building,

Great Falls, Montana, February 12, 1914.

Mr. J. G. G. Wilmot,

Northern Hotel, Billings, Montana.

Dear Mr. Wilmot:

After you left today I saw Mr. Armour unexpectedly, and he knows that there is something up, and he told me that he was thoroughly disgusted with the Company and said that he believed that one of the two factions had to be eliminated, either ourselves or Grogan and Dalbey. He also said he was quite positive that they would be willing to go out provided their notes were canceled and the small amount paid by them was given back, and I believe it will be a very easy matter.

Mr. McVay was down to the office and I instructed him to order Cohn or Donald Arthur over here at once and get the books in shape so that everything could be cleaned up at this next meeting. McVay seems like a nice fellow and I believe

he would like to have a finger in the pie, which we will talk over when I get back Sunday.

From what I learn from Armour they have no defense excepting that they are pretty much disgusted with the crowd and are ready to get out.

Keep me fully advised on whatever may happen. My address will be Cutbank. I dictated this letter and it will be sent after I leave.

With best wishes, I am,

Sincerely yours,

(Signed) ROBT. R. SIDEBOTHAM.

X.

It was error on the part of the court to overrule defendants' objection to the introduction in evidence of plaintiff's Exhibits 151 and 152, which read as follows:

Exhibit 151, Plff.

Northwestern Trustee Company.

(Incorporated.)

(Letter-head.)

Great Falls, Montana, October 9, 1914.

Mr. R. R. Sidebotham,

Deer Lodge, Montana.

Dear Mr. Sidebotham:

We beg to advise you that we are this day in receipt of a subscription from C. F. Carrere, Butte, Montana, for \$34,390 worth of stock. Every day shows a rapid increase in our sales.

We wish to remind you to send in any applica-

tions you have for loans in your direct promptly.

We are,

Very truly yours,

NORTHWESTERN TRUSTEE COMPANY,

Per A. M. ALDERSON.

JH Pres.

Exhibit 152, Plff.

Extract.

Sworn affidavit.

State of Montana, County of Cascade.

R. H. Atkinson, being first duly sworn on oath, deposes and says that he is Assistant Secretary of the Northwestern Trustee Company; that as such officer he has charge of the books and papers of the Company; that the Northwestern Trustee Company has not given away or gratuitously disposed of any stock for imaginary services for the use of names of official titles of men; that in options, contracts, notes receivable in cash, the sales have amounted to over \$580,000.00.

R. H. ATKINSON.

Subscribed and sworn to before me this seventh day  
of February, A. D., 1914.

DUDLEY CROWTHER.

Notary Public for the State of Montana, residing in  
Great Falls, Montana. My commission expires  
December 26, A. D., 1914.

## XI.

It was error on the part of the court to overrule defendants' objection to the introduction in evi-

dence of plaintiff's Exhibit 144, which reads as follows:

NORTHWESTERN TRUSTEE COMPANY.

(Incorporated.)

(Letter-head.)

Great Falls, Montana.

To the Stockholder or Subscriber Addressed:

On account of the many inquiries received from our stockholders with reference to the surplus account of the Northwestern Trustee Company, will state that the stock of the Company sells at \$30.00 per share, although the par value is \$10.00. Each stockholder will, however, earn dividends on the total assets of the Company, which includes the surplus as well as the capital.

It is customary with all investment and financial concerns to start business with a surplus fund. It was deemed advisable by our Board of Directors to offer the stock at a premium, thereby creating a surplus fund and placing our company on an equal basis with these institutions. Should our Company have sold its stock at par, it would possibly have taken years to build up a surplus and put it on a competitive basis with other institutions of the country.

Trusting that it is fully clear to you why the par value is \$10.00 and the selling price \$30.00, we are,

Yours very truly,

NORTHWESTERN TRUSTEE CO.

XII.

It was error on the part of the court to overrule defendants' objection to the introduction in evidence of various exhibits in the form of circulars, letters and pamphlets, as shown by the Bill of Exceptions, which were not shown to be signed or written by either of these defendants or sent out in the United States mails with their knowledge or direction.

XIII.

It was error on the part of the court to overrule defendants' objection to the introduction in evidence of plaintiff's Exhibit 98, which reads as follows:

NORTHWESTERN TRUSTEE COMPANY.

(Letter-head.)

Great Falls, Montana, Oct. 1, 1914.

To the Stockholder or Subscriber Addressed:

At a meeting of the Board of Directors held on the 25th day of September, the selling price of the Company's stock was advanced from \$20.00 to \$30.00 per share.

The progress of our institution has been rapid, and today there are over 600 stockholders and the number is increasing daily.

The Company now plans to extend its operations into Washington, Oregon, Idaho and Wyoming, and it is believed by those most deeply interested that we will surely be the largest institution of its kind in the Northwest.

The Company's funds are being loaned out, as



fast as they are paid in, on first mortgages on Montana farms and ranch property.

We have provided for the old stockholders a small block of stock that may be purchased by them within fifteen days from date, inasmuch as the selling price of the stock was increased without their having prior notice of such increase. You can purchase the stock at \$20.00 per share on a cash basis, or easy terms as low as 10% cash, and the balance on monthly, quarterly, or semi-annual payments, having as long as one year for the payment of the same.

We are enclosing a separate application for the purpose of stock, and are willing for our old subscribers to make their own terms. We will send back the necessary papers to be signed up to \$20.00 per share. This purchase can only be made on condition that it reaches our office within 15 days from this date.

Thanking you for your earnest co-operation, we are,

Yours very truly,

SIDEBOTHAM & WILMOT,  
Sole Fiscal Agents.

By J. Hoskins.

#### XIV.

It was error on the part of the court to instruct the jury as follows:

What is intent? Intent is the quality of mind with which an act is done. It is the mental process, the design, the aim, the purpose or the object of the

act. How is this intent arrived at? Being a mental process, you cannot penetrate to the mind of a man, if he will not tell you, unless you can infer from his conduct so that the law is, a man's intent is manifested and shown by all the circumstances connected with the offense.

### XV.

It was error on the part of the court to instruct the jury as follows:

It includes everything designed to defraud by representation, as to past or present facts, or suggestions and promises as to the future when they are made by one, who, because of his superior knowledge or superior position, we will say, in reference to this company by one who has had inside knowledge of the facts, if he goes out and makes extravagant suggestions and promises, not warranted by the facts as he knows them, in order to induce some other men to contract with him for the stock, who otherwise would not buy, that is a scheme or plan to defraud, within the meaning of the statute."

### XVI.

The court erred in instructing the jury as follows:

"In September, 1914, Wiggins testified that Wilmot stopped him on the road, and sold him ten shares at thirty dollars (\$30.00), and told him the company had been paying dividends the past year at the rate of eight per cent, and he would guarantee that this year when Wiggins did buy, that it

would be thirty per cent, or better. No one had denied Wiggins' testimony, and there it stands for your consideration." (Tr. 475.)

XVII.

The court erred in denying defendants' petition for a new trial herein.

WELLINGTON D. RANKIN.

Attorney for R. R. Sidebotham and J. G. G. Wilmot.

That thereafter and on the 26th day of May, 1917, the bond of R. R. Sidebotham was approved and filed herein, which is in words and figures as follows, to-wit:

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TITLE OF THE COURT AND CAUSE.

KNOW ALL MEN BY THESE PRESENTS:

That we, Robert R. Sidebotham, as principal, and R. R. Reckards and Fred A. Woehmer, as sureties, are held and firmly bound unto the United States of America in the full and just sum of \$3,500.00 to be paid to the said United States of America, to which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 16th day of May, in the year of our Lord one Thousand nine hundred and seventeen.

Whereas, on the 30th day of January, 1917, the District Court of the United States in and for the District of Montana in a suit pending in the said court between the United States of America

plaintiff, and R. R. Sidebotham, defendant, a judgment and sentence was rendered against said defendant R. R. Sidebotham and the said defendant R. R. Sidebotham has obtained a writ of error to the United States Circuit Court of Appeals from the above entitled court to reverse the judgment and sentence in the aforesaid suit, and a citation directed to the said United States of America citing and admonishing the United States of America to be and appear in the United States Circuit Court of Appeals, for the Ninth Circuit, at the City of San Francisco, California thirty (30) days from and after the date of said citation,

Now, the condition of the above obligation is such that if the said R. R. Sidebotham shall appear in the United States Circuit Court of Appeals for the Ninth Circuit on the first day of the next term thereof to be held in the City of San Francisco on the ..... day of ....., 19..... and from day to day thereafter during said term and from term to term and from time to time, until finally discharged therefrom and shall abide and obey all orders made by the said United States Circuit Court of Appeals for the Ninth Circuit in said cause, and shall surrender himself in execution of the judgment and sentence appealed from as said court may direct, if the judgment and sentence of the said District Court against him shall be affirmed by the said United States Circuit Court of Appeals for the Ninth Circuit, then the above obligation to

be void; else to remain in full force virtue and effect.

R. P. RECKARDS

FRED A. WOEHNER

ROBERT R. SIDEBOTHAM

STATE OF MONTANA, County of Cascade, ss.

R. P. RECKARDS, surety on the annexed recognizance being duly sworn, deposes and says, that he resides at Great Falls, Montana; that he is a freeholder in the State of Montana; that he is worth the sum of Three Thousand Five Hundred, (\$3,500.00) Dollars over and above all his just debts and liabilities, in property subject to execution and sale, and that his property consists of Land, City Property, Loans and Bank stock.

R. P. RECKARDS

Subscribed and sworn to before me this 16th day of May, 1917.

O. B. KOTZ,

Notary Public for the State of Montana.

Residing at Great Falls, Montana.

My commission expires April 1, 1918.

(SEAL.)

STATE OF MONTANA, County of Cascade, ss.

FRED A. WOEHNER, surety on the annexed recognizance being duly sworn, deposes and says, that he resides at Great Falls, Montana; that he is a freeholder in the State of Montana; that he is worth the sum of Three Thousand Five Hundred, (\$3,500.00) Dollars over and above all his just debts and liabilities, in property subject to exe-



cution and sale, and that his property consists of Cash on hand.

FRED A. WOEHNER.

Subscribed and sworn to before me this 16th day of May, 1917.

O. B. KOTZ,

Notary Public for the State of Montana.

Residing at Great Falls, Montana.

My commission expires April 1, 1918.

(SEAL)

That thereafter and on the 1st day of June, 1917, the bond of J. G. G. Wilmot was filed and approved herein, which is in words and figures as follows: to-wit:

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TITLE OF THE COURT AND CAUSE.

KNOW ALL MEN BY THESE PRESENTS:

That we, J. G. G. WILMOT, as principal and P. P. Smith and E. S. Anderson as sureties, are held and firmly bound unto the United States of America in the full and just sum of \$3,500 to be paid to the said United States of America, to which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Scaled with our seals and dated this 21 day of May, in the year of our Lord one Thousand nine hundred and seventeen.

Whereas on the 30th day of January, 1917, the District Court of the United States in and for the District of Montana in a suit pending in the said

court between the United States of America plaintiff, and J. G. G. Wilmot, defendant, a judgment and sentence was rendered against said defendant J. G. G. Wilmot and the said defendant J. G. G. Wilmot has obtained a writ of error to the United States Circuit Court of Appeals from the above entitled court to reverse the judgment and sentence in the aforesaid suit, and a citation directed to the said United States of America citing and admonishing the United States of America to be and appear in the United States Circuit Court of Appeals, for the Ninth Circuit, at the City of San Francisco, California thirty (30) days from and after the date of said citation.

Now, the condition of the above obligation is such that if the said J. G. G. Wilmot shall appear in the United States Circuit Court of Appeals for the Ninth Circuit on the first day of the next term thereof to be held in the City of San Francisco on the ..... day of ....., 19..... and from day to day thereafter during said term and from term to term and from time to time, and until finally discharged therefrom and shall abide and obey all orders made by the said United States Circuit Court of Appeals for the Ninth Circuit in said cause, and shall surrender himself in execution of the judgment and sentence appealed from as said court may direct, if the judgment and sentence of the said District Court against him shall be affirmed by the said United States Circuit Court of

Appeals for the Ninth Circuit, then the above obligation to be void; else to remain in full force virtue and effect.

P. P. SMITH ·  
J. G. G. WILMOT  
E. S. ANDERSON  
L. J. CAMPBELL

STATE OF MONTANA,    }  
County of Lewis and Clark. } ss.

P. P. SMITH, surety on the annexed recognizance being duly sworn, deposes and says, that he resides at Helena, Montana; that he is a freeholder in the State of Montana; that he is worth the sum of Three Thousand Five Hundred (\$3,500.00) Dollars over and above all his just debts and liabilities, in property subject to execution and sale, and that his property consists of Cash and Real Estate in Lewis and Clark County, Montana.  
of May, 1917.

P. P. SMITH

Subscribed and sworn to before me this 30th day

J. H. BRASS,

U. S. Commissioner for the District of  
Montana.

(SEAL)

STATE OF MONTANA,    }  
County of Lewis and Clark } ss.

L. J. CAMPBELL, surety on the annexed recognizance being duly sworn, deposes and says, that he

resides at Stevensville, Montana; that he is a freeholder in the State of Montana; that he is worth the sum of Three Thousand, Five Hundred (\$3,500.00) Dollars over and above all his just debts and liabilities, in property subject to execution and sale, and that his property consists of Real Estate and personal property in Ravalli County, Montana.

L. J. CAMPBELL.

Subscribed and sworn to before me this 30th day of May, 1917.

WELLINGTON D. RANKIN,

Notary Public for the State of Montana.

Residing at Helena, Montana.

My Commission expires March 30th, 1918.

(SEAL.)

STATE OF MONTANA,    }  
County of Lewis and Clark. } ss.

E. S. ANDERSON, surety on the annexed recognizance being duly sworn, deposes and says, that he resides at Augusta, Montana; that he is a freeholder in the State of Montana; that he is worth the sum of Three Thousand Five Hundred (\$3,500.00) Dollars over and above all his just debts and liabilities, in property subject to execution and sale, and that his property consists of Personal and real property.

E. S. ANDERSON

Subscribed and sworn to before me this 28th day of May, 1917.

HELENA C. STELLWAY,

Notary Public for the State of Montana.

Residing at Helena, Montana.

My commission expires Mar. 1, 1920.

(SEAL)

That thereafter and on the 12th day of November, 1917, a writ of error was filed herein, which is in words and figures as follows, to-wit:

(TITLE OF COURT AND CAUSE.)

WRIT OF ERROR.

The President of the United States of America,  
To the Judge of the District Court of the United  
States, for the District of Montana, GREETING:

Because in the record and proceedings and also in the rendition of a plea, which is in the District Court of the United States, for the District of Montana, before you, between the United States of America and R. R. Sidebotham and J. G. G. Wilmot, manifest errors have happened to the great damage of R. R. Sidebotham and J. G. G. Wilmot, as by the record herein appears, and it being fit that the errors, if any there have been, should be duly corrected and full and speedy justice done to the parties aforesaid, in this behalf:

YOU ARE HEREBY COMMANDED, if judgment be therein given that under your seal distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, the United States Circuit Court of Appeals for the Ninth Circuit, to be held at the City of San Francisco, California, together with this writ, so that you may have the same at the said City of Sar



Francisco, within thirty days from the date of this writ in the said United States Circuit Court of Appeals, to be there and then held; that the record and proceedings aforesaid may be inspected and the said United States Circuit Court of Appeals for the Ninth Judicial District may cause further to be done therein, to correct said errors, if any, and do what is right and according to the laws and customs of the United States of America should be done.

WITNESS the Honorable Edward D. White, Chief Justice of the United States this 12th day of November in the year of Our Lord one thousand nine hundred and seventeen, and of the Independence of the United States of America, one hundred thirty-eighth year.

GEO. W. SPROULE,

Clerk of the District Court of the United States, for the District of Montana.

By C. R. GARLOW, Deputy Clerk.

(SEAL)

Receipt of a copy of the foregoing writ is acknowledged this 12th day of November, 1917.

B. K. WHEELER,

United States District Attorney  
for the District of Montana.

#### ANSWER OF COURT TO WRIT OR ERROR

The Answer of the Honorable, the District Judge of the United States for the District of Montana, to the foregoing, Writ:

The record and proceedings whereof mention is within made, with all things touching the same, I certify, under the seal of the said District Court of the United States, to the Honorable United States Circuit Court of Appeals for the Ninth Circuit, within mentioned, at the day and place within contained, in a certain schedule to this writ annexed, as within I am commanded.

By the Court,

GEO. W. SPROULE, Clerk

By C. R. GARLOW, Deputy

(SEAL)

That thereafter and on the 13th day of November, 1917, a citation was filed herein, which is in words and figures as follows, to-wit:

(TITLE OF COURT AND CAUSE)

CITATION

UNITED STATES OF AMERICA: ss.

The President of the United States to the United States of America,

GREETING:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, to be held at the City of San Francisco, in the State of California, within thirty (30) days from the date of this writ, pursuant to a writ of error filed in the Clerk's office of the District Court of the United States, for the District of Montana wherein R. R. Sidebotham and J. G. G. Wilmot are plaintiffs in error and the United States of America is defendant in error, to show

cause, if any there be, why the judgment in said writ of error mentioned, should not be corrected or reversed or a new trial granted, and speedy justice should not be done, to the parties in that behalf.

Nov. 12, 1917.

BOURQUIN

United States District Judge  
for the District of Montana.

Receipt of copy of within citation acknowledged this 13 day of November, 1917. B. K. Wheeler, U. S. Atty.

That thereafter and on the 24th day of November, 1917, an order for the transporting of certain original exhibits in lieu of printed copies was filed, which is in words and figures as follows, to-wit:

(TITLE OF COURT AND CAUSE.)

ORDER.

It being the opinion of the judge presiding in the above entitled court, and cause that exhibits numbered 21, 22, 90, 128, 129, 160, 162, 170, 176, 184 and 214, used as evidence in the above entitled cause in the trial of said action cannot be reproduced by printing because the said exhibits contain many photographs, pictures, illustrations, maps, etc. and that the same cannot be described or the tendency thereof given with any degree of accuracy, and that exhibits numbered 1, 2, 3 and 16 are in book form, exhibit 1 containing the minutes of the Northwestern Trustee Company, and exhibits 2 and 3 being the minutes of the executive committee of the said company, and exhibit 16 being the ledger of said com-

pany, and that it is necessary and proper that all of the aforementioned exhibits should be inspected by the United States Circuit Court of Appeals for the Ninth Circuit in considering the above entitled action upon the writ of error issued herein;

IT IS THEREFORE ORDERED, that the originals of all of the above mentioned exhibits, the same being included in the bill of exceptions herein by reference only, be sent up as a part of the record in the above entitled cause to the United States Circuit Court of Appeals for the Ninth Circuit, in lieu of printed copies thereof, and it is further ordered that the same be sent by express in a sealed package, all charges prepaid, addressed to the Marshall of the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, in sufficient time so that they shall be received by said marshall at least ten days before the above entitled action is heard by said court.

Done this 24 day of November, 1917.

BOURQUIN

Judge of the District Court of the United States, in and for the District of Montana.

That thereafter and on the 28th day of November, 1917, a praecipe for transcript of record was filed herein, which is in words and figures as follows, to-wit:

(TITLE OF COURT AND CAUSE.)

PRAECIPE FOR TRANSCRIPT OF RECORD.

To B. K. Wheeler, Esq., United States District Attorney, Attorney for defendant in error above



named, and George W. Sproule, Clerk of the above entitled court:

You and each of you will please take notice, that the undersigned, attorney for the plaintiffs in error, R. R. Sidebotham and J. G. G. Wilmot, above named, hereby serves upon you and each of you this praecipe to indicate to you the portions of the records and files in the above entitled cause which said plaintiffs in error desire to and will incorporate in their transcript of record on the writ of error issued herein on the 12th day of November, 1917, to have the judgment hereinbefore rendered and entered herein reviewed by the United States Circuit Court of Appeals for the Ninth Circuit, and the Clerk of said District Court will incorporate and include in said transcript the following:

1. The indictment.
2. The minute entry of July 5, 1916, and of July 1, 1916, showing the arraignment of the defendants R. R. Sidebotham and J. G. G. Wilmot.
3. The motion and petition for change of venue filed December 30, 1916, by R. R. Sidebotham and J. G. G. Wilmot, and order of January 9th, 1917, denying same.
4. Motions for directed verdict, filed January 23, 1917, on the part of the defendants R. R. Sidebotham and J. G. G. Wilmot, and order showing ruling of the court thereon.
5. The Bill of exceptions.
6. The verdict.
7. The judgment.



8. The petitions for a new trial herein by the defendants R. R. Sidebotham and J. G. G. Wilmot, and order denying same.

9. The petition for writ of error and order allowing same.

10. Assignment of errors.

11. Writ of error.

12. Citation on writ of error and acknowledgment of service.

13. Bond of each of the defendants R. R. Sidebotham and J. G. G. Wilmot.

14. Copy of this praecipe.

WELLINGTON D. RANKIN,  
Attorney for R. R. Sidebotham and  
J. G. G. Wilmot.

CLERK'S CERTIFICATE TO TRANSCRIPT  
OF RECORD

UNITED STATES OF AMERICA } ss.  
District of Montana

*C. R. Garlow*  
I, ~~George W. Sprout~~, Clerk of the United States District Court for the District of Montana, do hereby certify and return to the Honorable, The United States Circuit Court of Appeals for the Ninth Circuit, that the foregoing volume, consisting of ....*728* pages, numbered consecutively from 1 to...*728*, inclusive, is a true and correct transcript of all proceedings in said cause required to be incorporated in the record on writ of error by the praecipe of plaintiffs in error for said record, and consists of full, true, correct and complete copies of the indict-

ment, the minute entry of July 5, 1916 and of July 1, 1916, showing the arraignment of the defendants R. R. Sidebotham and J. G. G. Wilmot, the motion and petition for change of venue filed December 30, 1916 by R. R. Sidebotham and J. G. G. Wilmot and order of January 9th, 1917, denying same, the motions for directed verdict, filed January 23, 1917 on the part of the defendants R. R. Sidebotham and J. G. G. Wilmot and order showing ruling of the court thereon, the bill of exceptions, the verdict, the judgment, the petitions for a new trial and order denying same, the petition for writ of error and order allowing same, the assignment of error, the citation on writ of error and acknowledgement of service, the bond of each of the defendants R. R. Sidebotham and J. G. G. Wilmot, the praecipe for transcript of record and order for the transporting of certain original exhibits in lieu of printed copies, and of the whole thereof as the same appear from the original records and files of said court in my possession as such clerk.

And I further certify that the foregoing transcript is a complete record containing in itself and not by reference all the papers, exhibits and other proceedings which are necessary to a consideration of said cause, save and except certain original exhibits ordered to be sent to the Circuit Court of Appeals for the Ninth Circuit in lieu of printed copies, and I do further certify and return that I have annexed to said transcript and included within the paging thereof the original writ of error and cita-

tion issued in said cause.

I further certify that the costs of the transcript of record amount to the sum of \$ 333.80 and have been paid by the plaintiffs in error herein.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of said court at Helena, Montana, on this 12<sup>th</sup> day of December 1917

C. R. Garlow

Clerk.



*In the District Court of the United States, in and  
for the District of Montana.*

R. R. SIDEBOTHAM and J. G. G. WILMOT,  
Plaintiffs in Error,  
vs.

THE UNITED STATES OF AMERICA,  
Defendant in Error.

**Stipulation for Insertion of Minute Entry of  
District Court in Printed Transcript of Record  
and Order Thereon.**

It is hereby stipulated and agreed that the Transcript of Record in the above-entitled cause may be amended by inserting therein as page 731, the minute entry of the District Court of the United States, in and for the District of Montana, of January 24th, 1917, a certified copy of which is hereto attached.

WELLINGTON D. RANKIN,  
Attorney for Plaintiffs in Error.  
B. K. WHEELER,  
Attorney for Defendant in Error.

Dated San Francisco, Cal., April 29, 1918.

So ordered:

WM. H. HUNT,  
United States Circuit Judge.

*In the District Court of the United States in and  
for the District of Montana.*

No. 2842.

UNITED STATES

vs.

A. M. ALDERSON et al.

**Minutes of Court—January 24, 1917.**

Defendants and respective counsel, with the jury, present as before and trial of cause resumed; and thereupon Court announced the jury would be instructed to acquit the defendants White and Tobin and ordered that said defendants be discharged and their bonds exonerated. Thereupon, on further consideration, Court ordered that the motion of defendant Court for a directed verdict be granted as to counts one, two, three and four of the indictment and denied as to the other remaining counts. Thereupon, after due consideration, it was ordered that the motion of defendant Rainwater for a directed verdict be granted, said defendant discharged and his bond exonerated, the jury to be so instructed. Thereupon, on further consideration of the motion of defendant Wilmot for a directed verdict, Court ordered that said motion be granted as to the first count of the indictment and denied as to the remaining counts. Thereupon Court announced that the Court would instruct the jury to acquit the defendants Alderson, Rae and Speer as to counts one and two of the indictment and to



acquit the defendant Bertoglio on count one of said indictment. Thereupon Mr. Galen asked and was granted leave to amend by interlineation the motions of defendants Alderson and Rae. Thereupon A. J. Galen, Esq., of counsel for defendants Alderson and Rae, moved the Court to require the plaintiff to elect between the eleventh count of the indictment herein and the other remaining counts, upon the ground of duplicity; whereupon a similar motion was made on behalf of each of the remaining defendants. Thereupon Court announced that the motions would be taken under advisement and decision reserved until the close of the evidence. Thereupon defendants rested, evidence closed, and the jury excused until 2 P. M. Thereupon the motions to require the plaintiff to elect between the 11th count and the remaining counts of the indictment, upon the ground of duplicity, were duly argued before, submitted to, and by the Court taken under advisement. Thereafter, at 2 P. M., defendants and respective counsel with the jury being present as before, it was ordered by the Court that said motions to require plaintiff to elect between the 11th count of the indictment and the remaining counts be denied, and exception noted. Thereupon, on motion of the United States Attorney, it was ordered that the first four counts of the indictment herein be dismissed as to all defendants, the jury to be so instructed, and the case to go to the jury on the 6th, 7th, 8th, 9th and 11th counts. Thereupon, after the opening argument by counsel for

plaintiff, further trial of cause was ordered continued until to-morrow morning at 10 o'clock.

Entered in open court January 24th, A. D. 1917.

GEO. W. SPROULE,  
Clerk.

By C. R. Garlow,  
Deputy Clerk.

Attest a true copy of minute entry.

[Seal] C. R. GARLOW,  
Clerk.

[Endorsed]: No. 3098. United States Circuit Court of Appeals for the Ninth Circuit. Stipulation for Insertion in Printed Transcript of Record of Certified Copy of Minute Entry of District Court. Filed Apr. 29, 1918. F. D. Monekton, Clerk.

IN THE  
United States Circuit Court of Appeals <sup>2</sup>  
FOR THE  
NINTH CIRCUIT.

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R. R. SIDEBOTHAM and J. G. G. WILMOT,  
*Plaintiffs in Error,*

VS.

THE UNITED STATES OF AMERICA,  
*Defendant in Error.*

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**BRIEF FOR PLAINTIFFS IN ERROR.**

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WELLINGTON D. RANKIN, Esq.,  
Attorney for Plaintiffs in Error.

B. K. WHEELER, Esq., United States Attorney,  
Attorney for Defendant in Error.

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FILED  
OCT 10 1918  
U.S. DIST. CT.  
S.D. CALIF.



IN THE  
United States Circuit Court of Appeals  
FOR THE  
NINTH CIRCUIT.

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R. R. SIDEBOTHAM and J. G. G. WILMOT,  
*Plaintiffs in Error,*

VS.

THE UNITED STATES OF AMERICA,  
*Defendant in Error.*

---

**BRIEF FOR PLAINTIFFS IN ERROR.**

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STATEMENT OF THE CASE

In this action an indictment was presented against the following persons: A. M. Alderson, W. C. Rae, R. R. Sidebotham, J. G. G. Wilmot, J. W. Speer, D. G. Bertoglio, H. A. Meyer, J. A. Sampson, M. A. Cort, C. A. Rainwater, C. W. Tobin, W. W. White, E. C. Wills, J. J. Ives and L. D. Clausen.

The indictment consisted of eleven counts. The first ten counts of the indictment charged the defendants with having devised a scheme or artifice to



defraud, and for the purpose of executing the scheme or artifice, or attempting so to do, having placed or caused to be placed letters, circulars, etc., in the postoffice of the United States, contrary to Section 5480 of the Revised Statutes of the United States and the amendments thereto, being Section 215 of the Penal Code of the United States.

Each of the ten counts is similar, and they differ only in the particular letter or circular alleged to have been sent through the mail.

The eleventh count charged the defendants with a conspiracy contrary to Section 5440 of the Revised Statutes of the United States, or Section 37 of the Penal Code of the United States (Rec. 1-94).

Before the cause was submitted to the jury some of the counts had been withdrawn from the consideration of the jury and some of the defendants had been dismissed on motion for directed verdict, and all of the defendants save R. R. Sidebotham and J. G. G. Wilmot were found not guilty by the jury under the counts submitted to the jury. The defendants Sidebotham and Wilmot were found guilty under the sixth count of the indictment and not guilty as to the remaining counts of the indictment submitted to the jury. (Rec. 691-695).

Only five counts of the indictment were submitted to the jury, they being the sixth, seventh, eighth, ninth and eleventh.

Before the action was brought on for trial the defendants Sidebotham and Wilmot filed a motion for change of place of trial, supported by their affi-

davit, which was by the court denied. (Rec. pp. 96-102).

At the conclusion of the evidence each of these defendants submitted a motion for a directed verdict, which motions were denied (Rec. pp. 102-104). The defendants Sidebotham and Wilmot also filed a motion requiring the government to elect whether the action would be prosecuted upon the first ten counts of the indictment or upon the eleventh count, which motion was by the court denied. (Rec. p. 731).

The evidence relied upon by the government for a conviction was in substance that the Northwestern Trustee Company, a corporation, had at several times through these defendants, as officers thereof, raised the price of its stock without the assets of the company warranting the increase in the price of the stock. Evidence was introduced for the purpose of showing that as a part of the scheme to defraud stock had been issued to these defendants and other prominent state officials of the State of Montana, and that some of the defendants and other prominent state officials of the State of Montana had merely options on stock and were not really owners and holders thereof; and that the defendants in order to make the sales of the stock of the Northwestern Trustee Company, in its advertising matter and other literature, published the fact that these state officials were stockholders in the Northwestern Trustee Company, and that as a part of the scheme to defraud the defendants mailed or caused to be mailed the circulars, pamphlets and letters referred

to in the bill of exceptions.

None of the defendants testified in their own behalf, nor was any evidence offered on the part of the defendants or any of them.

Judgment was pronounced against the defendants Sidebotham and Wilmot that they be confined in the United States penitentiary at Leavenworth, Kansas, for thirteen months and pay the costs, amounting to \$4,112.00. (Rec. pp. 695-698).

Thereafter these defendants filed their petition for a new trial which was denied. (Rec. pp. 700-703).

That thereafter the plaintiffs in error filed a petition for a writ of error and a writ of error was issued. (Rec. pp. 703-705).

Accompanying the writ of error was an assignment of errors. (Re. pp. 705-715).

Each of the defendants is now released under bonds in the sum of \$3,500.00. (Rec. pp. 705-720).

Some of the questions involved relate to the aforesaid action and rulings of the court in (a) denying the motion of plaintiffs in error to require the Government to elect between the eleventh count of the indictment and the remaining counts; (b) denying the motion of plaintiffs in error for a directed verdict; (c) the giving of certain instructions to the jury, and are raised by the exceptions taken which have been settled in the bill of exceptions.

Other questions involved relate to the exceptions to the rulings of the court in admitting evidence as appear fully in the specification of errors.

There is also involved the question of the sufficiency of the evidence to sustain a conviction and the error in pronouncing judgment against plaintiffs in error by reason of the insufficiency of the evidence.

## SPECIFICATION OF ERRORS.

### I.

The court erred in denying the motion of these defendants requiring the United States District Attorney to make an election between the eleventh count of the indictment and the remaining counts upon the ground of duplicity. (Rec. p. 731).

### II.

The court erred in denying the motion of the defendants R. R. Sidebotham and J. G. G. Wilmot for a directed verdict herein. (Rec. p. 103).

### III.

The court erred in pronouncing judgment against the defendants R. R. Sidebotham and J. G. G. Wilmot. (Rec. pp. 695-698).

### IV.

The court erred in overruling defendants' objection to the introduction of, and in admitting, the following evidence:—

Q. And what business did you have with him?

A. When Mr. Meyer came to my house, he came there to sell some stock in the Northwestern Trustee Company. Just Mr. DeCelle and I were present at



the time that Mr. Meyers came. I had a conversation with Mr. Meyers about the stock, you know about buying stock of him. He said it was the best company in the Northwest and so many was into it, and all the business men, and he made it so clear to us that we thought it was all right. He said the company was to sell those bonds and build houses and one thing another. It was going to be so nice and prosperous that it couldn't fail, it was just perfectly honest, there would be nothing against it. He said, we would have 8 percent on all our stock as it would rise we would have the rise of the stock and then we could have 8 percent. 8% interest on all once a year I think. He stated the first payment would be made a year from the time we signed for the stock. He said the Governor, and Senator Gibson and most all the officials of the state were connected with the company. (Rec. pp. 235-236).

V.

The court erred in overruling defendants' objection to the introduction of, and in admitting the following evidence:—

Q. Were any representations made by Mr. Sidebotham or Mr. Meyers in his presence, with reference to the organization of the company, its purposes, etc., as suggested? State what those representations were.

A. He said that he intended to form this company in the interest of building an apartment house



and various kinds of buildings in the city of Great Falls and all the money that was secured from the sale of stock would go for that purpose. I believe he told me the par value of the stock was fifteen dollars. The value of the stock was fifteen dollars. (Rec. pp. 289-290).

## VI.

It was error on the part of the court to overrule defendants' objection to the introduction in evidence of the plaintiff's Exhibit 31, which reads as follows:

“Northwestern Trustee Company  
Incorporated

Authorized Capital Stock \$500,000.00

Sidebotham & Wilmot, Sole Fiscal Agents  
General Offices, Lower Floor, Tod Building,  
Great Falls, Montana, February 12, 1914.

“Mr. J. G. G. Wilmot,  
Northern Hotel, Billings, Montana.

Dear Mr. Wilmot:

“After you left today I saw Mr. Armour unexpectedly, and he knows that there is something up, and he told me that he was thoroughly disgusted with the Company and said that he believed that one of the two factions had to be eliminated, either ourselves or Grogan and Dalbey. He also said he was quite positive that they would be willing to go out provided their notes

were cancelled, and the small amount paid by them was given back, and I believe it will be a very easy matter.

“Mr. McVay was down to the office and I instructed him to order Cohn or Donald Arthur over here at once and get the books in shape so that everything could be cleaned up at this next meeting. McVay seems like a nice fellow and I believe he would like to have a finger in the pie, which we will talk over when I get back Sunday.

“From what I learn from Armour they have no defense excepting that they are pretty much disgusted with the crowd and are ready to get out.

“Keep me fully advised on whatever may happen. My address will be Cutbank. I dictated this letter and it will be sent after I leave.

“With best wishes, I am

Sincerely yours,

(Signed) ROBT. R. SIDEBOTHAM.”

(Rec. pp. 330-332).

## VII.

It was error on the part of the court to overrule defendants' objection to the introduction in evidence of plaintiff's Exhibits 151 and 152, which read as follows:

“Northwestern Trustee Company. (Letter-head.)  
(Incorporated.)

Great Falls, Montana, October 9, 1914.

“Mr. R. R. Sidebotham,  
Deer Lodge, Montana.

Dear Mr. Sidebotham:

“We beg to advise you that we are this day in receipt of a subscription from C. F. Carrere, Butte, Montana, for \$34,390 worth of stock. Every day shows a rapid increase in our sales.

“We wish to remind you to send in any applications you have for loans in your direct promptly.

“We are,

Very truly yours,

NORTHWESTERN TRUSTEE COMPANY,

Per. A. M. Alderson,

J. H. Pres.”

Exhibit 152 Plff.

Extract.

Sworn Affidavit.

State of Montana, }  
County of Cascade. } ss.

“R. H. Atkinson, being first duly sworn on oath deposes and says that he is Assistant Secretary of the Northwestern Trustee Company; that as such officer he has charge of the books and papers of the Company; that the Northwestern Trustee Company has not given away or gratuitously disposed of any stock for imaginary services for the use of names of official titles of men; that in options, contracts, notes receivable in cash, the sales have amounted to over \$580,000.00.

R. H. ATKINSON.

Subscribed and sworn to before me this seventh day of February, A. D., 1914.

DUDLEY CROWTHER.

Notary public for the State of Montana, residing in Great Falls, Montana. My commission expires December 26, A. D. 1914.”  
(Rec. pp. 426-427).

### VIII.

It was error on the part of the court to instruct the jury as follows:

What is intent? Intent is the quality of mind with which an act is done. It is the mental process, the design, the aim, the purpose or the object of the act. How is this intent arrived at? Being a mental process, you cannot penetrate to the mind of a man, if he will not tell you, unless you can infer from his conduct so that the law is, a man's intent is manifested and shown by all the circumstances connected with the offense. (Rec. p. 648).

### IX.

The court erred in instructing the jury as follows:

“In September, 1914, Wiggins testified that Wilmot stopped him on the road, and sold him ten shares at Thirty dollars (\$30.00) and told him the company had been paying dividends the past year at the rate of eight per cent, and he would guarantee that this year when Wiggins did buy, that it would be thirty per cent, or better. No one had denied Wiggins' testimony, and there it stands for your consideration.”  
(Rec. p. 678).

### X.

The court erred in denying defendants' petition for a new trial herein. (Rec. pp. 701-703).

## ARGUMENT

### I.

THE MOTION TO REQUIRE THE GOVERNMENT TO ELECT WHETHER IT WOULD SEEK A CONVICTION ON THE ELEVENTH COUNT OR THE REMAINING COUNTS OF THE INDICTMENT SHOULD HAVE BEEN SUSTAINED.

The crime set forth in the eleventh count is a separate and distinct offense from those set forth in the remaining counts of the indictment and is in no way connected with the offense set forth in the remaining counts.

The evidence required to prove the charge set forth in the eleventh count would necessarily be different than that required to prove those set out in the remaining counts.

The punishment prescribed by law for a commission of the offense set forth in the eleventh count is different than that prescribed for the other offenses.

The punishment prescribed for the commission of the offense set forth in the eleventh count is “not more than \$10,000, or to imprisonment for not more than two years or to both fine and imprisonment in the discretion of the court”.

The other offenses are punishable by a fine of “not more than one thousand dollars, or imprisonment not more than five years, or both.”



The charge set forth in the eleventh count was that of a conspiracy and was based upon Section 37 of the Penal Code of the United States which provides as follows:

“If two or more persons conspire either to commit any offense against the United States or to defraud the United States in any manner or for any purpose, and one or more of such parties *do any act to effect the object* of the conspiracy all the parties to such conspiracy shall be liable to a penalty of not more than ten thousand dollars, or to imprisonment for not more than two years or to both fine and imprisonment in the discretion of the court.” (Italics ours).

The other counts charged a violation of the statute forbidding the use of the mails to defraud, being Section 215 of the Penal Code of the United States.

A conspiracy is an offense entirely separate and distinct from the crimes or offenses that the parties intended to commit thereby.

In other words the conspiracy itself is a crime separate and distinct from those which form the objects of the conspiracy.

That there is a distinction between a conspiracy to commit an offense, and the offense which formed the object of the conspiracy is clearly pointed out by the court in the case of United States vs. Casey et al, 247 Fed. 362. In that case the indictment charged a conspiracy to violate Sec. 13 of the Selective Service Act of May 18, 1917, by keeping and setting

up a house of ill fame, bawdyhouse, and brothel within five miles of the military post.

Contention was made that the indictment was duplicitous.

In disposing of this question the court said:

“The statute and the Secretary’s regulation make it an offense either to set up or to keep a house of ill fame, brothel, or bawdyhouse within the prohibited zone. The contention that the indictment is duplicitous, in that the language ‘keeping and setting up’ charges two offences, and the use of the words ‘house of ill fame, bawdyhouse, and brothel’ amounts to a charge of committing three offenses, must be decided adversely to the defendants, for the reason that *a conspiracy is an offense entirely distinct from the crimes the parties intended to commit thereby.* 4 Ency. Pl. & Pr. 719; *John Gund Brewing Co. v. United States*, 206 Fed. 386, 124 C. C. A. 268; *State v. Sterling*, 34 Iowa, 443, 444; *State v. Kennedy*, 63 Iowa, 197, 200, 18 N. W. 885; *Noyes v. State*, 41 N. J. Law, 418, 420, 421. The offense charged is not that the defendants set up and kept such places, but that of conspiracy to set them up and keep them, and the commission of overt acts in furtherance of that conspiracy. The fallacy in the defendants’ position is that it confounds the crime, which is the conspiracy, with the objects of the conspiracy. A combination to commit several crimes is a single offense, and the offense can always be laid according to the truth. If, therefore, it is a fact that the defendants conspired

to violate the law in question in two or more distinct particulars with respect to such combination, the criminal act was single, and such it appears to be on the face of the indictment". (Italics ours).

On the same question the Supreme Court of Iowa in the case of State vs. Kennedy Sr., 18 N. W. 885, said:

"The crime of conspiracy consists in the unlawful and corrupt agreement of the parties. *It is entirely distinct from the crimes or unlawful acts which the parties have in view when they enter into the conspiracy, or the object which they intend to accomplish in pursuance of it.* The crime is complete whenever the agreement is entered into, and it is not essential to it that any overt act be committed in pursuance of it." (Italics ours).

Section 1024 of the Revised Statutes of the U. S. provides for the joinder of counts in an indictment, as follows:

"When there are several charges against any person for the same act or transaction, or for two or more acts or transactions connected together, or for two or more acts or transactions of the same class of crimes or offenses, which may be properly joined, instead of having several indictments the whole may be joined in one indictment in separate counts; and if two or more indictments are found in such cases, the court may order them to be consolidated."

It has been held repeatedly that a motion requiring the government to elect between counts charging separate crimes should be sustained.

In the case of U. S. v. Gaston, 28 Fed. 848, the defendant, as shown by the opinion of the court, was accused by indictment of the following offenses:

“(1) That the defendant carried on the business of retailing liquor without posting in his place the stamp denoting the payment of the special tax required by law; (2) that he carried on the said business without having paid the special tax required by law; (3) that he carried on the business of dealing in manufactured tobacco without posting in the place the stamp denoting the payment of the special tax required by law; (4) that he carried on the said business without having paid the special tax required by law.”

And the court in holding that the counts were improperly joined, said:

“This indictment contains, in separate counts, two distinct offenses, the penalty in each offense being different from the other. As a retail liquor dealer he *must* be imprisoned as a part of the penalty, and as a dealer in manufactured tobacco he *may* be imprisoned, and the minimum fine is different. These offenses are, besides, separate and distinct transactions, and not of the same class of crimes or offenses that may be joined under section 1024 of the Revised Statutes.”

The Supreme Court of the U. S. in the case of



Pointer v. U. S., 38 Law. Ed. 208, in stating the facts which presented this question, said:

“Before the case was opened to the jury for the government the defendant moved that the district attorney be required to elect on which count of the indictment he would claim a conviction. That motion having been overruled, he was required to go to trial upon all the counts.

“Upon the conclusion of the evidence the defendant renewed the motion that the government be required to elect upon which count of the indictment it would prosecute him. This motion was overruled. After an elaborate charge by the court, the jury retired to consider their verdict, and returned into the court the following: ‘We, the jury, find the defendant John Pointer guilty of murder as charged in the first count of the indictment. F. M. Barrick, Foreman. We, the jury, find the defendant John Pointer guilty of murder as charged in the third count of the indictment. F. M. Barrick, Foreman.’” . . . . .

1. The motion to quash the indictment and the motion to require the government to elect upon which count it would try the defendant, present the question whether two distinct charges of murder can properly be embraced in one indictment.”

In holding that the indictment was bad for duplicity, the court said:

“It is appropriate to say that we lay no stress upon the circumstance that the motions in question were not made until after the defendant



had pleaded not guilty. We have already said that, if in the progress of the trial it appeared that the accused might be embarrassed or confounded in his defense, by reason of being compelled to meet both charges of murder at the same time, and before the same jury, it was in the power of the court, at any time before the trial was concluded, to require the government to elect upon which charge it would seek a verdict."

Section 9151 of the Penal Code of the State of Montana is declaratory of the law in the State of Montana as regards the right to join more than one offense in the same indictment or information. It provides as follows:

"The indictment or information must charge but one offense, but the same offense may be set forth in different forms under different counts, and when the offense may be committed by the use of different means, the means may be alleged in the alternative in the same counts."

That a motion to elect is the proper method of raising this question there can be no doubt.

Betts vs. State (Texas), 133 S. W. 251;

State vs. Carragin (Mo.), 16 L. R. A. (N. S.)  
561;

Kimbrell vs. State (Okl.), 123 Pac. 1027;

Sturgis vs. State (Okl.), 102 Pac. 57;

State vs. Lockwood, 3 Atl. 539.

It cannot be contended that no prejudice resulted to the defendants by reason of the ruling of the court in refusing to compel an election.

Much evidence was allowed to be introduced under the theory that it was admissible under the eleventh count which charged a conspiracy which was damaging to these defendants, and which otherwise could not have been admissible in proving the charge under the remaining counts. This is evident from the statements made by the court during the trial relative to the admission of acts and statements of one alleged co-conspirator. The court said:

“It is a conspiracy charge if they prove it. The acts and statements of one conspirator are competent evidence against his fellows. You may proceed.”—(Rec. p. 235).

Furthermore, it is entirely possible that had the government been compelled to make an election it might have elected to stand upon the eleventh count and as to this the jury brought in a verdict of acquittal. No one can say just what evidence might have led the jury to believe that the defendants were guilty of the offense set out in the sixth count. It might have been the evidence allowed to be introduced under the charge of a conspiracy, which in fact did not exist.

The language of the Supreme Court of the United States in the case of *McElroy v. U. S.*, 41 Law. Ed. 355, is here pertinent. It said:

“It cannot be said in such case that all the

defendants may not have been embarrassed and prejudiced in their defense, or that the attention of the jury may not have been distracted to their injury in passing upon distinct and independent transactions. The order of consolidation was not authorized by statute and did not rest in mere discretion.”

It was error to deny the motion to require the Government to make an election between the eleventh count of the indictment and the remaining counts and a new trial of said action should be granted.

## II.

THE EVIDENCE IS INSUFFICIENT TO SUPPORT A CONVICTION UNDER THE SIXTH COUNT AND THEREFORE THE MOTIONS FOR DIRECTED VERDICT SHOULD HAVE BEEN SUSTAINED.

The circular referred to in the sixth count shows on its face that it was signed by J. Hosking. (Rec. pp. 48-49). The evidence does not show that Sidebotham or Wilmot actually deposited in the mails the circular referred to in the sixth count or that the same was deposited by their agent under their directions with their knowledge. That such a showing is necessary to support a conviction is a fundamental proposition of law.

In the case of *United States vs. Flemming, et al*, 18 Fed. 907, the rule is stated as follows:

“It is also not necessary to show, in order to make out this offense, that the defendants actually, with their own hands, placed a letter or packet in a post-office. If it appears from the proof that it was done through their agency or direction, by an employe or agent of the defendants, employed and directed for that purpose, it is enough.”

The same rule was declared in the case of *Rumble vs. United States*, 143 Fed. 772, 779 where the court said:

“In addition to the points already discussed, special objection is made to exhibit 17, which is a printed circular prepared by Smith and Bull, who were induced to become agents for the sale of stock that the plaintiff was endeavoring to sell. It was prepared, signed, and distributed by Smith & Bull through the mails, and it is claimed that this circular was wholly irrelevant and inadmissible, and that the plaintiff in error could not be bound by any matter therein contained.

*“It may be admitted, for the purpose of this opinion, that, if the circular had been issued and circulated without the knowledge and consent of the plaintiff in error, he would not be bound thereby.”* (Italics ours).

In the case of *Commonwealth v. Eastman*, 1 Cush. (Mass.) 189, 48 Am. Dec. 596, the court in discussing the question whether or not certain letters not written by the party were admissible, said:

“So far as these letters might have been shown by other proof to have been acted upon or sanctioned by the defendants, so far they would have been competent evidence.”

When the circular set out in the sixth count was admitted in evidence the record discloses that the following proceedings took place in an effort to connect the sending of the same with these defendants.

The witness Hosking testified as follows:

“These two were sent out together. Sidebotham and Wilmot actually sent them out, mailed them. I did for them. It was my instructions to send them out for them. Exhibits 97, 98 and 99, were sent through the mail. And as far as I can tell you, as far as I can remember they were dropped into the United States post office.” (Rec. p. 333).

This evidence is insufficient to show that these defendants instructed the witness Hosking to send out the circular. She may have received the instructions from any other of the defendants. The evidence does not show which one of these defendants, if either of them, instructed the witness to send the circular in the mails.

The evidence being insufficient to sustain a conviction it was also error to pronounce judgment against plaintiffs in error.



### III.

THE DECLARATIONS OF AN ALLEGED CONSPIRATOR MADE IN THE ABSENCE OF ONE DEFENDANT ARE NOT ADMISSIBLE AGAINST SUCH DEFENDANT UNTIL AFTER A CONSPIRACY IS PROVED:

During the examination of the witness Alice M. Decelles it was shown that she had business transactions with a Mr. Henry A. Meyers. The following question was propounded to the witness:

Q. And what business did you have with him?

To this question the following objection was interposed by Judge Smith:

“That is objected to as incompetent, irrelevant and immaterial. Mr. Meyers’ name has been entered in this indictment as a defendant, but has not been apprehended. I don’t understand that the government can put the name of John Doe in an indictment and prove what he said.”

This objection was overruled by the court, and the court made the following statement:

“It is a conspiracy charge if they prove it. The acts and statements of one conspirator are competent evidence against his fellows. You may proceed. Objection overruled.”

Exception noted. (Rec. p. 235).

Throughout the trial many like objections were interposed to the admission in evidence of statements and declarations made by alleged co-conspirators not in the presence or with the knowledge of these

plaintiffs in error, and the objections to the same were overruled by the court for the same reasons as assigned to the above question. No rule of proof respecting a party's connection with a conspiracy is better settled than the following:

“No man's connection with the conspiracy can be legally established by what the others did in his absence and without his knowledge and concurrence.”

Winchester etc. Co. v. Creary, 116 U. S. 161;

Rea v. Missouri, 17 Wall. 532;

U. S. v. Babcock, 3 Dill. (U. S.) 581; 24 Fed. Cas. No. 14, 487;

U. S. v. Goldberg, 3 Biss. 175; 25 Fed. Cas. No. 14, 487;

U. S. v. McKee, 3 Dill. 546; 26 Fed. Cas. No. 15, 685;

U. S. v. Newton, 52 Fed. 275;

Barkley v. Copeland, (Cal.) 25 Pac. 405.

It is also a well-established rule of law that the statements and declarations made by an alleged co-conspirator are not admissible against the other defendants until there has been *prima facie* proof of the existence of a conspiracy, and neither is it permissible that such statements and declarations in themselves can be used to prove the conspiracy. Sec. 7887 of the Revised Codes of the State of Mon-

tana provides in part as follows:

“In conformity with the preceding provisions, evidence may be given upon a trial of the following facts:

“*After proof of a conspiracy, the act or declaration of a conspirator against his co-conspirator, and relating to the conspiracy.*” (Italics ours).

This statute though perhaps not controlling upon this Court, is entitled to some consideration as indicating the policy of the State of Montana with reference to this question.

In the case of *People v. Irwin*, 20 Pac. 56, 58, the court in speaking of this question, said;

“But it is claimed by counsel for respondent that these declarations were admissible in evidence to prove conspiracy, and the court seems to have allowed them for that and no other purpose; that is to say, the main fact which they are supposed to explain is the alleged conspiracy, and not the killing. In other words, it is admitted by counsel for respondent—as we understand the matter—that, if there was no question of conspiracy in the case, a declaration by deceased that Irwin was making preparations to kill him, and would kill him unless he left the country, would be inadmissible. This must be admitted. Such a declaration is on a par with the one referred to in *People v. Carlton*, supra, and, as said there, ‘not admissible upon any theory or principle of the law with which we are acquainted.’ The existence of a

conspiracy was a fact to be proven in the case. Without such proof the defendant could not be convicted, as it is not claimed that he was present at the killing, or knew of it until some hours after it occurred.

“Now, the declaration of Prewett, Fowles, or of any other alleged conspirator, could not be admitted to prove the fact of conspiracy. Such declaration would be rejected, ‘lest,’ as Greenleaf says: ‘the jury should be misled to infer the fact itself of a conspiracy from the declaration of strangers.’ I Greenl. Ev. Sec. 111. *‘After proof of conspiracy, the act or declaration of a conspirator against his co-conspirator, and relating to the conspiracy,’ is the restriction which is placed upon the evidence of co-conspirators by our Code of Civil Procedure, (section (1870), lest the jury take the declaration of one, not proven by other evidence to be a conspirator, as proof of the conspiracy itself, and then, ‘after proof of conspiracy by such declarations, use the same evidence to establish the guilt of the defendant. We are unable to discern any greater sanctity in the declarations of a deceased in this regard than that pertaining to the declarations of alleged conspirators. Declarations favorable to defendant, made by the deceased so long prior to the killing, have been held to be not admissible as a part of the res gestae.’* (Italics ours.)

In the case of *People v. Parker*, 34 N. W. 720, 723, the court in speaking of this question, said:

“A very important question arising in this case relates to the admission of the statements



of Van Alstine, made at various times in reference to this deed and the ownership of the land, not in the presence or hearing of the respondent Parker, and without his knowledge or consent. The theory of the prosecution was that Van Alstine, Cleveland, and Parker conspired together to commit the crime, and that the acts and declarations of each in the pursuance of the common purpose was evidence against all, whether in their presence or not. This is true where the acts and declarations sought to be given in evidence are confined to the time intervening between the beginning and ending of the conspiracy. What was said or done by one of the conspirators before the conspiracy was formed, or after its object had been obtained, or its work fully completed, not in the presence or hearing of the others, and not brought to their knowledge and ratified by them, is not admissible against them or either of them. And before such acts and declarations can be admitted, in any event, a *prima facie* case of conspiracy must appear to the trial court, and then the declarations and acts during the performance of the conspiracy can be submitted to the jury, to be used by them if they find such conspiracy existed, but to be discarded in case it is not established. *Such acts and declarations cannot be used to show the conspiracy without other independent evidence.* The first statement made by Van Alstine in reference to this land after the death of his wife, as proven by the people, was to one Thomas J. Lowery, at a religious meeting, held near Kelly's Corners. The substance was that he



had given Eleanor some hundreds of dollars towards the payment for this land; that he would have had her deed it to him had he supposed she was going to die, but as it was, he had not 'the scratch of a pen to show for it'. He asked Lowery what he could do about it, and Lowery advised him to place his claim before the commissioners. Respondent then said: 'Tom, can you make out a deed, and date it back?' Lowery answered: 'No, sir: I cannot.' There is no pretence that the respondent ever knew of this conversation, *and there is not the slightest warrant anywhere in the testimony that at this time any conspiracy had been formed or thought of between Parker and Van Alstine.* On the contrary, the fact of Van Alstine asking Lowery to make a false deed rebuts any idea that he and Parker had agreed together to forge the deed in question. The evidence had a direct tendency to show that at the time of the talk with Lowery no deed from Eleanor to Van Alstine was in existence, and therefore that the deed acknowledged by Parker was a forgery. It was properly used against Van Alstine upon the trial, but as against Parker it was inadmissible; being the declaration of Van Alstine without the presence or sanction of Parker, and before they had joined in a conspiracy to forge and defraud as alleged in the information.

"Equally inadmissible was the testimony of Hiller to a conversation had with Van Alstine to the same purport. In May, 1877, Hiller testified that Parker had a conversation with him nearly of the same nature as that of Van Alstine, which occurred in December, 1876, or

January, 1877. It is argued that the similarity of these two talks is evidence of a then existing conspiracy between Van Alstine and Parker to forge a deed of this land. What Parker said was clearly admissible against him, and might be evidence of a conspiracy formed at that time, but it had no tendency to establish the conspiracy existing at the time of Van Alstine's talk with Hiller.

“Evidence was also introduced as to what was done and said in the presence of Van Alstine at the time of the appraisal of the property of the deceased, Eleanor Pelton; and that, when the appraisers spoke of inventorying this land as the property of Eleanor, Van Alstine made no objection. It is not shown that Parker was in anyway connected with this appraisal, or knew anything about it. The appraisal took place in the fall of 1876. It is evident that no conspiracy existed at that time. The evidence was improperly received.” (*Italics ours*).

In the case of *State v. Brady*, 12 S. E. 325, 327, the court in speaking of this question, said:

“The acts and declarations of the defendants are evidence for the jury to consider in determining whether, in fact, the defendants did form the conspiracy with which they are charged; *and here I may repeat to you that the acts and declarations of any one of the defendants, although evidence against the party making them are not evidence against any of the others, unless you find there was a common purpose.* Then the acts and declarations of each one of the

parties who had the common purpose are competent evidence for the jury to consider as against each one of the defendants who had such common purpose to unlawfully cheat and defraud W. K. Jackson.” (Italics ours).

In the case of State v. Mace, 24 S. E. 798, 800, the court recognized the rule that proof of the conspiracy should first be made before such evidence becomes admissible. In this case, however, the court was satisfied that such a conspiracy did exist and that proof of that fact had been made. However, the court recognized that this was an essential requirement before the evidence could properly be admitted. In the course of its opinion the court said:

“The other exceptions were to the testimony going to show threats against the deceased, made before the homicide by the defendants, at different times, and not in the presence of each other. *This testimony was not offered until the fullest proof had been received going to show that the defendants, on the night of the killing, had concerted and conspired to take the life of the deceased.* The testimony went to prove that they sought opportunity to kill him from the time they saw him; that they called him aside from the crowd after having talked to themselves a while, saying, ‘We have a little settlement to make with you;’ that one or two of the witnesses followed whereupon the defendants told them to stay away; that presently they went off towards Ingle’s, after the liquor, and,

returning, found the deceased sitting on a bank, on the side of the road; that Newton said, 'Come up here, Zeb,' whereupon Zeb and some of the witnesses started, when Newton said, 'No, we don't want anybody but Zeb.' Jeff had the pistol in his hand, the other two defendants saying to the witness, 'Don't bother Jeff; let Jeff alone'. Jeff had his way, and shot and killed the deceased. These defendants are brothers, and Flasher's threats were because of a difficulty between Jeff and the deceased. Under all the circumstances, we are of opinion that the testimony was competent to show that the conspiracy was made and entered into by the defendants before the night on which it was carried out." (Italics ours).

The same rule was declared in the case of *People v. Nall*, 89 N. E. 1012, 1016, where the court said:

"Evidence tending to show the relation of the parties, the purpose of the combination, and the preliminary steps taken to effect that purpose is within the scope of the investigation to establish the conspiracy. *The conspiracy once being shown, acts and conversations of one of the conspirators are admissible against all.*" (Italics ours).

The eleventh count of the indictment was based upon a conspiracy formed by the defendants to use the mails to defraud. Inasmuch as the jury found the defendants not guilty under this eleventh count this proves conclusively that there did not exist a conspiracy among the defendants, and we submit



that the evidence failed to make out a *prima facie* case of conspiracy. That a *prima facie* case of conspiracy had not been established at the time of the introduction of such evidence and that the court realized this fact is shown by the statement of the court as follows, "It is a conspiracy charge if they prove it." This being true the evidence which was admitted was obviously not properly admissible because when offered there was no proof of a conspiracy on the part of the defendants. The evidence was prejudicial, for the jury undoubtedly would consider this evidence in determining whether in fact there existed a scheme to defraud, though it was not properly admissible on that issue.

#### IV.

#### EVIDENCE IMPROPERLY ADMITTED.

Exhibit 151 and 152 were introduced in evidence over the objection of the defendants. The objection was based upon the ground that the introduction of the exhibits would violate the constitutional rights of the defendants because they would be forced to give evidence against themselves and also violate the constitutional right to be immune from unreasonable searches and seizures. (Rec. p. 426).

Exhibit 151 reads as follows:

"Mr. R. R. Sidebotham,

Deer Lodge, Montana.

Dear Mr. Sidebotham:

"We beg to advise you that we are this day in



receipt of a subscription from C. F. Carrere, Butte, Montana, for \$34,390 worth of stock. Every day shows a rapid increase in our sales.

“We wish to remind you to send in any applications you have for loans in your direct promptly.

We are,

Very truly yours,  
NORTHWESTERN TRUSTEE COMPANY,  
Per A. M. ALDERSON,  
JH. Pres.”

Exhibit 152 reads as follows:

“State of Montana, }  
County of Cascade. } ss.

“R. H. Atkinson, being first duly sworn on oath, deposes and says that he is Assistant Secretary of the Northwestern Trustee Company; that as such officer he has charge of the books and papers of the company; that the Northwestern Trustee Company has not given away or gratuitously disposed of any stock for imaginary services for the use of names of official titles of men; that in options, contracts, notes receivable in cash, the sales have amounted to over \$580,000.00.

R. H. ATKINSON.

Subscribed and sworn to before me this seventh day of February, A. D. 1914.

DUDLEY CROWTHER,  
Notary Public for the State of Montana,  
residing in Great Falls, Montana. My  
commission expires December 26, A. D.  
1914.”

The same is true of exhibit 31 which was admitted in evidence over the objection of the defendants. (Rec. pp. 217-218-330-331).

It reads as follows:

“Mr. J. G. G. Wilmot,

Northern Hotel, Billings, Montana.

“Dear Mr. Wilmot:

“After you left to-day I saw Mr. Armour unexpectedly, and he knows that there is something up, and he told me that he was thoroughly disgusted with the Company and said that he believed that one of the two factions had to be eliminated, either ourselves or Grogan and Dalbey. He also said he was quite positive that they would be willing to go out provided their notes were cancelled and the small amount paid by them was given back, and I believe it will be a very easy matter.

“Mr. McVay was down to the office and I instructed him to order Cohn or Donald Arthur over there at once and get the books in shape so that everything could be cleaned up at this next meeting. McVay seems like a nice fellow, and I believe he would like to have a finger in the pie, which we will talk over when I get back Sunday.

“From what I learn from Armour they have no defense excepting that they are pretty much disgusted with the crowd and are ready to get out.

“Keep me fully advised on whatever may happen. My address will be Cutbank. I dictated this letter and it will be sent after I leave.

“With best wishes, I am,  
Sincerely yours,  
(Signed) ROBT. R. SIDEBOTHAM.”  
(Rec. pp. 330-331).

A similar proposition was presented to the court in the case of *Packer v. United States*, 106 Fed. 906, where the court said:

“It is also urged that the letter was admissible as a tacit admission by the accused of the truth of its statements; it having been proved that the accused did not reply to it. Admissions, of course, may be inferred from silence as well as from express statements, but it has been uniformly held by the courts that the failure to reply to a letter is not to be treated in a criminal or in a civil action as an admission of the contents of the letter.”

The same proposition was also before the court in the case of *Bumble v. United States*, 143 Fed. 772, where the court in speaking of the admissibility of a certain letter written by one of the defendants, said:

“The plaintiff in error claims that the court erred in admitting in evidence the following letter:

“Oct. 29, 2 G. W. Rumble, Chronicle Bldg.—  
Dear Sir: Replying to yours of the 10th would say, we now have an opportunity to sell the ‘Amo’ mine for \$1,500.00. If you want it at that price you can have it. \* \* \*

‘Very respectfully,  
GEO. H. FULLER.’

“The objection urged to this letter, in addition to others previously disposed of, is that it is not a letter written by the defendant, and is therefore wholly irrelevant and immaterial to the subject-matter under consideration. It will be conceded that a letter written to the defendant which was not answered by him, would not be admissible in evidence as tending to show an implied admission on his part of the truth of the statements contained in the letter.”

## V.

### ERRONEOUS INSTRUCTIONS OF THE COURT.

The court erred in referring in its instruction to the fact that the defendants did not take the stand and testify in their own behalf.

The Court in instructing the jury undertook to define the meaning of the word “intent”, and in the course of the charge stated:

“What is intent? Intent is the quality of mind with which an act is done. It is the mental process, the design, the aim, the purpose or object of the act. How is this intent arrived at? Being a mental process, you cannot penetrate to the mind of a man, *if he will not tell you*, unless you can infer from his conduct so that the law is, a man’s intent is manifested and shown by all the circumstances connected with the offence.” (Rec. p. 648).

This statement calls the attention of the jury to the fact that the defendants did not testify in their

own behalf and, coming from the court, unduly impresses it upon the minds of the jurors to the prejudice of defendants.

Again, the court instructed the jury as follows:

“In September, 1914, Wiggins testified that Wilmot stopped him on the road, and sold him ten shares at Thirty Dollars (\$30.00), and told him the company had been paying dividends the past year at the rate of eight per cent, and he would guarantee that this year when Wiggins did buy, that it would be thirty percent, or better. *No one had denied Wiggins’ testimony,* and there it stands for your consideration.” (Rec. p. 678).

This also directs the jurors’ attention to the fact that the defendant Wilmot did not take the stand. No showing was made that anyone else heard the statements referred to and therefore Wilmot was the only witness who could have denied the statements referred to, and the instruction comments on his failure to do so.

Section 9484 of the Penal Code of the State of Montana provides in part as follows:

“If the defendant does not claim the right to be sworn, or does not testify, it must not be used to his prejudice, and the attorney prosecuting must not comment to the court or jury on the same.”

Any indirect reference to the defendants’ refusal to testify is error. In the case of Watt vs. People



of Illinois, 1 L. R. A. 403, 409, the court said:

“It is no doubt the duty of the circuit court in all criminal trials, when the defendant does not testify in his own behalf, to see to it that the mandate of the statute is strictly enforced. *Indirect and covert references to the neglect of the defendant to go upon the witness stand may be as prejudicial to his rights as a direct comment upon such neglect.*” (Italics ours).

The rule is stated in Volume 1, Wharton's Criminal Evidence, Section 435a, as follows:

“But only that comment evades the law which by direct or indirect reference tends to direct the attention of the jury to the fact that the accused is silent.”

And there is no question but that the law is well-settled that a defendant is justified in not taking the stand in his own behalf, and if this is so, that fact is not to be used in any way against him.

The statement made by Chief Justice Fuller in the case of Starr vs. United States, 38 L. Ed. 841, 846 is here pertinent. He said:

“It is obvious that under any system of jury trials the influence of the trial judge on the jury is necessarily and properly of great weight, and that his lightest word or intimation is received with deference, and may prove controlling.”

In the case of State v. Jones, 147 N. W. 822, 126 Minn. 45, it was held error for the court to call the

jury's attention to the fact that the defendant *was not present* during the trial.

In *Miller v. People*, 216 Ill. 309, 74 N. E. 743, the lower court in sustaining an objection to certain evidence, in referring to the defendant, used the following words:

“He is here, and he can answer for himself in regard to it.”

The Supreme Court of Illinois in holding this statement objectionable uses the following language:

“When announcing the ruling denying to the plaintiff in error the right to have such questions and answers detailed by the witness (the court reporter), the court, after stating that the plaintiff in error had a right only to cross-examine as to the correctness of the testimony of the reporter as to the questions and answers called for by the prosecution, said (speaking of plaintiff in error), ‘He is here, and he can answer for himself in regard to it.’ This remark was objectionable. It, in effect, said to the jury that the plaintiff in error had the legal right to appear as a witness in that present hearing, and could then explain, qualify, or correct, as he might desire, any statement brought out by the testimony of the reporter. The statute which authorizes any one accused of crime to testify in his own behalf confers a right or personal privilege to speak or remain silent. This statute (Cr. Code, div. 13, P. 6), expressly provides that his election not to testify shall not create any presumption against him,

and that the court shall not permit any reference or comment to be made on the failure to testify. *This remark of the court would necessarily create a presumption against the plaintiff in error in the event he should elect not to appear as a witness in the cause on trial, and, as the court remarked, "answer for himself in regard to it."* No objection was made or exception preserved to this remark. In *Angelo v. People*, 96 Ill. 209, 36 Am. Rep. 132, and in *Quinn v. People*, 123 Ill. 333, 15 N. E. 46, counsel for the prosecution, in argument to the jury, referred to the fact that the defendant had not seen fit to testify and explain or answer certain things claimed to have been proved against him. In each of the cases, objection was made; in the *Angelo Case* the court stopped counsel, and directed the jury to disregard that part of his argument; and in the *Quinn Case* the court stopped counsel, and then explained to the jury that the remarks were improper. In each of those cases we held that the reference made by counsel to the right of the defendant to give testimony in his own behalf interfered with a fair and impartial trial, to which the defendant was entitled under the law; and, notwithstanding the action of the court in restraining counsel and directing the jury to disregard what had been said, the violation of the statute was deemed prejudicial to the right of the defendant to a fair trial, and fatally erroneous. *In the case at bar the remark was that of the court, and not of counsel; but it was in a greater degree prejudicial to the right of the plaintiff in error to a fair and impartial trial*

*under the law, for the reason that, coming from the court, it would have greater weight with the jury.* In view of the state of the proof in the record, if objection had been preserved to this remark, we should have felt it our duty to reverse the judgment because of it." (Italics ours).

For the reasons herein set forth the judgment of the District Court should be reversed.

Respectfully submitted,

WELLINGTON D. RANKIN,

Attorney for plaintiffs in error.

**United States**  
**Circuit Court of Appeals**  
**For the Ninth Circuit.**

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R. R. SIDEBOTHAM and J. G. G. WILMOT,  
Plaintiffs in Error.

vs.

THE UNITED STATES OF AMERICA,  
Defendant in Error.

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**Brief of Defendant in Error**

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United States  
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Defendant in Error.

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BRIEF FOR DEFENDANT IN ERROR.

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*Statement of the Case.*

As originally drawn, the indictment in this case contained eleven counts.

The first ten counts charged the devising of a scheme and artifice to defraud and for obtaining money and other property by means of false and fraudulent pretenses, representations and promises, under Section 215 of the Penal Code, in connection with the sale and disposition of stock of the Northwestern Trustee Company, a Montana corporation.

The eleventh count charges a conspiracy to commit an offense against the United States un-

der Section 37 of that Code, in that the defendants conspired to devise a scheme and artifice to defraud and for obtaining money and other property by means of false and fraudulent pretenses, representations and promises in connection with the sale of the Capital Stock of said company, contrary to the provisions of Section 215 of the Penal Code.

The case was submitted to the jury upon the sixth, seventh, eighth, ninth and eleventh counts of the indictment.

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## ARGUMENT.

### I.

Plaintiffs in Error contend that the Court erred in denying a motion to require the Government to elect whether it would seek a conviction on the eleventh count of the indictment, or the remaining counts thereof.

This contention is disposed of adversely to Plaintiffs in Error by express statutory provision.

Section 1024 of the Revised Statutes of the United States (Section 1690, United States Compiled Statutes, 1916) provides as follows:

“When there are several charges against any person for the same act or transaction, or for two or more acts or transactions connected together, or for two or more acts or transactions of the same class of crimes or offenses, which may be properly joined, instead of having several indictments the whole may be joined in one indictment

in separate counts; and if two or more indictments are found in such cases, the court may order them to be consolidated.”

All the charges contained in the indictment related to the same transaction, were connected together, were of the same class of offenses, and the evidence offered to sustain one count was also admissible and relative to the other counts of the indictment.

The same were properly joined in the same indictment:

- Rooney vs. United States, 203 Fed., (C. C. A., Ninth Circuit) 928-930;
  - Glass vs. United States, 222 Fed., (C. C. A., Ninth Circuit) 773-780;
  - Pointer vs. United States, 151 U. S., 396. 38 L. Ed. 208-214;
  - McGregor vs. United States, 134 Fed., 187-194. 69 C. C. A., 477-484;
  - Dolan vs. United States, 133 Fed., 440-446. 69 C. C. A., 274-280;
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Requiring an election is largely within the discretion of the trial court. The trial judge gets nearer to the case than judges of the appellate court can get. He is in a better position to judge of the sound exercise of this discretion than the appellate court can ordinarily reach. His exercise of this discretion should not be disturbed, unless it is clear that it was improvidently exercised.

- Gardes v. United States, 87 Fed., 172, 176;  
Certiorari denied, 171 U. S., 689, 43 L. Ed. 1179;

Rooney v. United States, 203 Fed., (C. C. A., Ninth Circuit) 928, 930-31;  
Dolan v. United States, 133 Fed., 440, 446;  
Pointer v. United States, 151 U. S., 396, 38 L. Ed. 208, 211;

It has repeatedly been held that a count charging a conspiracy under Section 37 of the Penal Code may properly be joined in the same indictment with counts charging a violation of other provisions of that code:

Gregory v. United States, 134 Fed., 187, 194;  
Wallace v. United States, 243 Fed., 302, 305;  
United States v. Clark, 125 Fed., 92, 94;

The cases cited by Plaintiffs in Error do not bear out their contention.

In the case of Pointer v. United States, (151 U. S., 396, 38 L. Ed., 208) the indictment contained four counts. In the first count it was charged that the defendant, on the 25th of December, 1891, at the Choctaw Nation, in the Indian county within the above district, did, with an axe, feloniously, willfully, and of his malice aforethought, "strike, cut, penetrate, and wound" upon the head of one Samuel E. Vandiveer, a white man and not an Indian, inflicting thereby a mortal wound from which death instantly ensued. The second count charged the same offense, and differed from the first only in using the words "beat, bruise," in place of "cut, penetrate."

In the third count the defendant was charged,



in the words of the first count, with having, in the same manner, on the 25th day of December, 1891, feloniously, willfully, and of his malice aforethought, at the Choctaw Nation, in the Indian country, within the same district, killed and murdered one William D. Bolding, a white man and not an Indian. The fourth count differed from the third only as the second count differed from the first.

The defendant pleaded not guilty and later moved to quash the indictment upon various grounds, one of which was that it charged two distinct felonies. That motion was overruled.

Before the case was opened to the jury for the government, the defendant moved that the District Attorney be required to elect on which count of the indictment he would claim a conviction. That motion having been overruled, he was required to go to trial upon all the counts.

Upon the conclusion of the evidence, the defendant renewed the motion that the government be required to elect upon which count of the indictment it would prosecute him. This motion was overruled.

After an elaborate charge by the court, the jury retired to consider their verdict and returned into court the following:

“We, the jury, find the defendant, John Pointer, guilty of murder as charged in the first count of the indictment.

F. M. BARRICK,  
Foreman.”

“We, the jury, find the defendant, John Pointer, guilty of murder as charged in the third count of the indictment.

F. M. BARRICK,  
Foreman.”

A motion for a new trial was made and overruled, and the court sentenced the defendant to suffer the punishment of death.

On appeal the Supreme court held that the action of the trial court was proper and the judgment was affirmed.

The ruling in this case is directly opposed to the view contended for by Plaintiffs in Error.

In the case of *McElroy v. United States*, 164 U. S., 76, 41 L. Ed., 355, cited by Plaintiffs in Error, George McElroy, John C. W. Bland, Henry Hook, Charles Hook, Thomas Stufflebeam, and Joe Jennings were indicted in the circuit court for the western district of Arkansas for assault with intent to kill Elizabeth Miller, April 16, 1894, the indictment being numbered 5332; also for assault with intent to kill Sherman Miller, on the same day, the indictment being numbered 5333; also for arson of the dwelling house of one Eugene Miller, May 1, 1894, the indictment being numbered 5334. Three of these defendants, namely, George McElroy, John C. W. Bland, and Henry Hook, were also indicted for the arson of the dwelling house of one Bruce Miller, April 16, 1894, the indictment being numbered 4843. It does not appear that Jennings was tried. The court ordered the four indictments consolidated

for trial, to which each of the five defendants duly excepted. Trial was then had and resulted in separate verdicts finding the defendants guilty, and, after the overruling of motions for new trial and in arrest, they were severally sentenced on each indictment to separate and successive terms in the penitentiary, and sued out a writ of error.

The question before the appellate court was, whether counts against five defendants can be coupled with a count against part of them, for offenses charged to have been committed by all at one time can be joined with another and distinct offense committed by part of them at a different time.

The record disclosed that there was no evidence offered tending to show that there had been or was a conspiracy between the defendants, or them and other parties, to commit the alleged crimes.

The court held that the statute did not authorize the joinder of distinct felonies not provable by the same evidence and in no sense resulting from the same series of acts.

This case is not in point under the facts disclosed by the record in the case at bar.

The motion to require the government to elect whether it would seek a conviction on the eleventh count, or the remaining counts of the indictment was properly denied.

## II.

The motion for a directed verdict was properly denied.

It appears from the record that Miss Hosking was employed by the Plaintiffs in Error from November 7, 1913, until April 1, 1916, and that the offices of Sidebotham and Wilmot and the Northwestern Trustee Company were together, (Tr. Pages 209 and 210).

That the exhibits complained of (Exhibits Nos. 98 and 99) were sent out to the stockholders in and subscribers for stock of the Northwestern Trustee Company, through the United States Mail, inclosed in Exhibit 97, (Tr. page 609).

And that Exhibits 97, 98 and 99 were sent out through the United States mail by Miss Hosking, acting under the instruction of the Plaintiffs in Error (Tr. Pages 332 and 333).

The requirements of the statute were fully met:

Section 215, Penal Code;

Rumble v. United States, 143 Fed., (C. C. A., Ninth Circuit) 772, 782.

## III.

The testimony of Mrs. DeCelles was properly admitted.

Henry A. Meyer was one of the defendants, (Tr. Page 1).

He was one of the Directors of the Northwestern Trustee Company and his name was used as such in the printed matter sent out by the Plaintiffs in Error, (Tr. Pages 163, 214, 334, 351).



He had an option upon a portion of the Capital Stock of the Northwestern Trustee Company, (Tr. Pages 149, 157, 161, 162).

He was operating with the Plaintiffs in Error in connection with the affairs of the Northwestern Trustee Company, at the time he dealt with Mrs. DeCelles, (Tr. Pages 289, 292, 295, 341).

He received a commission from the Plaintiffs in Error on all stock in the Northwestern Trustee Company sold by him (Tr. Pages 341 and 342).

Shortly after Mrs. DeCelles had purchased stock in the Northwestern Trustee Company the Plaintiffs in Error called upon her in an attempt to sell her more stock in the Company, and made practically the same statements that had been made by Mr. Meyer, and thereafter many communications, in some of which the name of Henry A. Meyer appeared as one of the Directors of the Northwestern Trustee Company, were sent to her in an effort to induce her to buy more stock (Tr. Pages 237-277).

And shortly after Mrs. DeCelles had purchased stock in the Northwestern Trustee Company from Henry A. Meyer, R. R. Sidebotham, one of the Plaintiffs in Error, called upon her and in referring to the sale of stock in said Company made to her by Mr. Meyer, said "it was allright" (Tr. Pages 281-282).

This testimony was merely one of many matters tending to throw light upon the operations of the Plaintiffs in Error and the other defendants



in connection with the matters charged in the indictment. The ruling of the Court was right.

#### IV.

Exhibits 151 and 152 (Tr. Page 426) were properly admitted in evidence.

Plaintiffs in Error left these exhibits lying on the desk of B. F. Johnson at his home near Warm Springs, Montana, (Tr. Pages 424, 426).

The facts do not warrant the contention made by the Plaintiffs in Error in this connection.

If possession of these Exhibits had been wrongfully obtained, no error in law was committed:

Lyman v. United States, 241 Fed., (C. C. A., Ninth Circuit) 945, 948.

Nor was there any error in the admission of Exhibit 31, (Tr. Pages 330 and 331) in evidence.

This Exhibit was dictated by R. R. Sidebotham, one of the Plaintiffs in Error, to Miss Hosking who wrote it out on the typewriter and signed the same at Mr. Sidebotham's suggestion (Tr. Page 212).

#### V.

There was no error in the instruction of the court.

The statement appearing on Page 648 of the transcript and commented on at Page 35 of the Brief for Plaintiffs in Error did not call the attention of the jury to the fact that Plaintiffs in Error did not testify in their own behalf.

Considered as a whole it is merely the statement of a truism.

If this statement called the fact that the Plaintiffs in Error did not testify in their own behalf to the attention of the jury, the Plaintiffs in Error are not now in a position to ask this Court to consider it.

The only objection to the charge of the Court appears at Pages 689 and 690 of the Transcript.

No objection to this part of the charge was made or exception taken by anyone.

The question will not now be considered:

York v. United States, 241 Fed., (C. C. A.,  
Ninth Circuit) 956, 957.

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R. R. Sidebotham, one of the Plaintiffs in Error, did not object or except to that portion of the Court's charge, found at Page 678 of the Transcript and commented on at Page 36 of the Brief for Plaintiffs in Error.

He is not now in a position to ask that a new trial be granted on account of this portion of the Court's charge to the jury. Considered as a whole, the charge of the Court did not call the attention of the jury to the fact that the Plaintiffs in error had not testified in the case.

It will also be observed that the objection made, (Tr. Page 689) did not call the attention of the trial court to the particular portion of the charge to which objection was made.

The Judgment of the District Court should be affirmed.

Respectfully submitted,

B. K. WHEELER, ESQ.,

*United States Attorney,*

HOMER G. MURPHY, ESQ.,

JAMES H. BALDWIN, ESQ.,

*Assistants to the United States Attorney,*

*Attorneys for Defendant in Error.*

**United States**  
**Circuit Court of Appeals**  
**For the Ninth Circuit.**

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R. R. SIDEBOTHAM and J. G. G. WILMOT,  
*Plaintiffs in Error,*

vs.

THE UNITED STATES OF AMERICA,  
*Defendant in Error.*

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**Petition for Rehearing**

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WELLINGTON D. RANKIN, Esq.,  
Attorney for Plaintiff in Error.

B. K. WHEELER, Esq., United States Attorney,  
Attorney for Defendant in Error.

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United States  
Circuit Court of Appeals  
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R. R. SIDEBOTHAM and J. G. G. WILMOT,  
*Plaintiffs in Error.*

vs.

THE UNITED STATES OF AMERICA,  
*Defendant in Error.*

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PETITION FOR REHEARING.

The plaintiffs in error in the above entitled cause respectfully submit to the court that this is a case wherein they may, with propriety, ask that a rehearing be granted, and to that end they petition therefor upon the following grounds:

I.

Upon the ground that the court, as shown conclusively by its opinion, misread the transcript on page 332, with reference to contention number II of plaintiffs in error that "The Evidence is Insufficient to Support a Conviction under the Sixth Count and therefore the Motions for Directed Verdict Should Have Been Sustained."

On page 6 of the opinion filed September 10, 1918, by the above entitled court the opinion reads:

“The plaintiff in error Sidebotham, *was called as a witness* and identified his signature at the bottom of letter Exhibit No. 98; that No. 97 was the Northwestern Trustee Company’s envelope; stated he had seen Exhibit No. 99 before and it was an application for stock. He didn’t know whether it was gotten out by the Northwestern Trustee Company or by Sidebotham and Wilmot. It was set out by Sidebotham and Wilmot.” Italics ours.

The opinion of the court says that Sidebotham took the witness stand, when as a matter of fact *Sidebotham did not take the stand at all.*

If the statement in the opinion were correct, that Sidebotham took the stand and stated that *the circular was sent out by Sidebotham and Wilmot*, then the contention of plaintiffs in error would be without foundation.

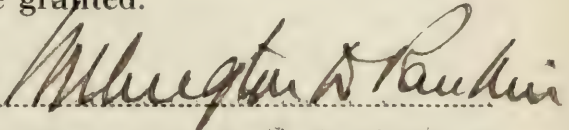
We respectfully submit that the court is completely in error when it assumes that the entire paragraph at the top of page 332 of the transcript is the testimony of R. R. Sidebotham, for, in fact, it is the testimony of J. Hosking.

It was because Sidebotham and Wilmot did not take the stand that contention number V of brief of plaintiffs in error was made, to the effect that the court’s instructions were a comment upon the fact that they did not take the stand.

Without repeating the contention set forth in paragraph II of our brief, we respectfully submit that the inferences that can be drawn from the testimony of J. Hosking are insufficient without

any testimony from Sidebotham to show that the circular letter referred to in the sixth count, (and for which plaintiffs in error were convicted for having sent it through the mail,) was in fact deposited at their direction or with their knowledge.

It is therefore respectfully submitted that a rehearing should be granted.

  
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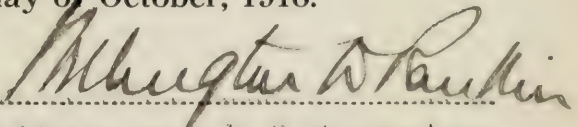
Attorney for plaintiffs in error, R. R. Sidebotham  
and J. G. G. Wilmot.

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CERTIFICATE.

I, Wellington D. Rankin, attorney for plaintiffs in error R. R. Sidebotham and J. G. G. Wilmot, hereby respectfully certify that in my judgment the petition for a rehearing is well founded, and I further certify that it is not interposed for the purpose of delay.

Dated this 5th day of October, 1918.

  
.....

Attorney for plaintiffs in error, R. R. Sidebotham  
and J. G. G. Wilmot.



Service of the foregoing  
Petition for rehearing  
and receipt of 3 copies  
thereof this 5<sup>th</sup> day of  
October 1918 is hereby  
acknowledged and admitted

B.H. Wheeler  
— us Atty

by Hiram B. Murphy  
Asst U.S. Atty.













